SESSION 1

TRANSFER OF PROPERTY AND ANTI MONEY LAUNDERING REQUIREMENTS

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A Solicitor, who was also a money laundering reporting officer (MLRO), has been fined £45,000 for failing to conduct anti-money laundering checks for wealthy clients believed to be linked to the Panama Papers scandal.

Khalid Mohammed Sharif, a partner at London-based Child & Child, was involved in the law firm's establishment of an offshore company used to manage London properties worth almost £60 million for clients.

However, he failed to take any or adequate steps to ascertain if the clients were politically exposed persons (PEPs) or reportedly linked to the proceeds of crime, the Solicitors Regulation Authority (SRA) said.

The property owners are reported be the daughters of a central Asian head of state, however, Sharif did not conduct the necessary due diligence checks which would of likely revealed that they were PEPs.

Child & Child instructed law firm Mossack Fonseca to incorporate the company in the British Virgin Islands, according to the Guardian. Mossack Fonseca was the law firm central to the Panama Papers scandal, and has since shut down.

Last year, the SRA said Sharif had also failed to apply enhanced customer due diligence in respect of the clients, in a situation which presented a higher risk of money laundering, or "where the customer had not been physically present for identification purposes."

In addition to the £45,000 fine, the Solicitors Disciplinary Tribunal ordered Sharif to pay costs of £40,000

MONEY LAUNDERING

Money laundering is a term used to describe a scheme in which criminals try to disguise the identity, original ownership, and destination of money that they have obtained through criminal conduct. The laundering is done with the intention of making it seem that the proceeds have come from a legitimate source. A simpler definition of money laundering would be a series of financial transactions that are intended to transform ill-gotten gains into legitimate money or other assets

Money Laundering Techniques

There are many forms of money laundering though some are more common and profitable than others. Some of the more popular money laundering techniques include:

Bulk cash smuggling involves literally smuggling cash into another country for deposit into offshore banks or other type of financial institutions that honor client secrecy.

Structuring, also referred to as "smurfing," is a method in which cash is broken down into smaller amount, which are then used to purchase money orders or other instruments to avoid detection or suspicion.

Trade-based laundering is similar to embezzlement in that invoices are altered to show a higher or lower amount in order to disguise the movement of money.

Cash-intensive business occurs when a business that legitimately deals with large amounts of cash uses its accounts to deposit money obtained from both everyday business proceeds and money obtained through illegal means. Businesses able to claim all of these proceeds as legitimate income include those that

provide services rather than goods, such as strip clubs, car washes, parking buildings or lots, and other businesses with low variable costs.

Shell companies and trusts are used to disguise the true owner or agent of a large amount of money.

Bank capture refers to the use of a bank owned by money launderers or criminals, who then move funds through the bank without fear of investigation.

Real estate laundering occurs when someone purchases real estate with money obtained illegally, then sells the property. This makes it seem as if the profits are legitimate.

Casino laundering involves an individual going into a casino with illegally obtained money. The individual purchases chips with the cash, plays for a while, then cashes out the chips, and claims the money as gambling winnings.

THE FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

The FATF has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. They form the basis for a co-ordinated response to these threats to the integrity of the financial system and help ensure a level playing field. First issued in 1990, the FATF Recommendations were revised in 1996, 2001, 2003 and most recently in 2012 to ensure that they remain up to date and relevant, and they are intended to be of universal application.

The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.

The FATF's decision making body, the FATF Plenary, meets three times per year.

A key objective of the FATF is to continually identify jurisdictions with significant weaknesses in their AML/CFT regimes, and to work with them to address those weaknesses.

The FATF's process helps protect the integrity of the international financial system by issuing a public warning about the risks emanating from the identified jurisdictions.

These public warnings also put pressure on the identified jurisdictions to address their deficiencies in order to maintain their position in the global economy. Public identification, and the prospect of public identification, encourages countries to swiftly make significant improvements.

FATF OBSERVATIONS

November 2017

Sri Lanka should continue to work on implementing its action plan to address its strategic deficiencies, including by enhancing risk-based supervision high-risk DNFBPs, including through prompt and dissuasive enforcement actions and sanctions, as appropriate; and demonstrating effective implementation of its targeted financial sanctions obligations related to proliferation financing.

Jan 28, 2018

Money laundering: Sri Lanka listed among 'high risk' countries Featured

The inter-governmental Financial Action Task Force (FATF) has listed Sri Lanka among eleven 'high risk and monitored jurisdictions' that have taken insufficient measures to combat money laundering, terrorist financing and other threats to the international financial system. The other countries are Bosnia and Herzegovina, North Korea, Ethiopia, Iran, Iraq, Syria, Trinidad and Tobago, Tunisia, Vanuatu and Yemen. The list is published on the website of FATF

CONSEQUENCES OF NON-COMPLIANCE WITH FATF STANDARDS

The Financial Action Task Force, placed Sri Lanka under monitoring status, or a grey list last year saying there were strategic deficiencies.

Sri Lanka has been given till March 2019 to fulfill the requirements.

"In a grey list (monitoring status), you are put on notice. At present we have not seen any direct impact but then if you slip down to the blacklist, it has dramatic repercussions," Governor Coomaraswamy said.

"For example our banks can lose their correspondent relationships, and generally people would be reluctant to deal with financial institutions. Right now it is an amber light."

DOMESTIC LEGAL FRAMEWORK

United Nations Act, No. 45 of 1968

Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005 as amended in 2011 and 2013

Prevention of Money Laundering Act, No. 5 of 2006, as amended in 2011

Financial Transactions Reporting Act, No. 6 of 2006

Trusts (Amendment) Act, No. 6 of 2018

Suspicious Transactions (Format) Regulations of 2017

Financial Transactions Reporting Regulations No. 1 of 2008

Financial Transactions Reporting Regulations No. 1 of 2006 (now repealed)

Order on Designation of the Financial Intelligence Unit

DESIGNATED NON-FINANCE BUSINESSES

Portfolio management

Investing, administering, & managing funds or money on behalf of others,

Safekeeping and administration of cash or liquid securities on behalf of others,

Safe custody services,

Trustee administration, and investment management and superannuation schemes,

Casions, gambling houses, conducting of lotteries,

Real estate agents,

Dealers of precious metals and stones,

Mortgagors

Lawyers, Notaries, accountants, when they provide services for buying and selling real estate, managing client monies, bank accounts, establishment of companies, creation of legal person,

Registered non-profit organizations and non-governmental or organizations,

Any organization designated by the Minister

Obligations of Conducting Customer Due Diligence & Reporting Suspicious Transactions to the Financial Intelligence Unit of Sri Lanka

The following Designated Non-Finance Businesses (DNFBs) are required to hereby carry out their obligation of implementing proper policies and procedures to prevent money laundering and terrorist financing attempts using such businesses and professions as provided for under the "Designated Non-Finance Business (Customer Due Diligence) Rules, No. 1 of 2018" (Rules) and the Extraordinary Gazette Notification No. 2015/56 dated April 21, 2017 on "Suspicious Transactions (Format) Regulations of 2017", in terms of the Financial Transactions Reporting Act, No. 6 of 2006 (FTRA).

(a) Real estate agents, when they are involved in transactions for their clients in relation to the buying and selling of real estate;

(b) Lawyers, notaries, other independent legal professionals and accountants as defined in Section 33 of the FTRA;

(c) Trust or company service providers as defined in Section 33 of the FTRA;

Accordingly, DNFBs should, inter alia, take following measures to comply with the requirement of the FTRA with respect to Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) regime in Sri Lanka.

- A Compliance Officer should be Appointed:
- The Compliance Officer is responsible for ensuring the DNFB's compliance with AML/CFT requirements in terms of the FTRA and the said Rules.
- It is required to appoint a responsible officer from the senior management level of the DNFBs as the compliance officer.
- The relevant registration form for appointing the compliance officer can be downloaded from the Financial Intelligence Unit (FIU) website
- Customer Identification is Essential in Conducting of Businesses:
- DNFBs need to follow the Rules issued by the FIU which is named as the "Designated Non-Finance Business (Customer Due Diligence) Rules, No. 1 of 2018" which is available for reference of above businesses and professions in the FIU website; www.usrilanka.gov.lk
- DNFBs should identify the customer and verify that customer's identity using a reliable source at the point of entering into a business relationship with the customer.

Need of Submitting Suspicious Transaction Reports (STRs):

- When a DNFB has reasonable grounds to suspect that any transaction may be related to the commission of any unlawful activity under the FTRA, it should submit an STR to the FIU.
- Schedule V of the Extraordinary Gazette Notification No. 2015/56 dated April 21, 2017 is to be used for this purpose

Records should be Maintained and Retained as follows:

- Records of transactions and of correspondence relating to transactions and records of all reports furnish to the FIU, which is the authority to monitor AML/CFT compliance in Sri Lanka should be retained for a period of six years from the date of transaction, correspondence and the furnishing of the report.
- Records of identity obtained should be retained for six years from the date of closure of the business relationship.
- Where any record is subject to an on-going investigation, such records should be retained until such time where the institution is informed by the relevant authority.

COMPLIANCE OFFICER

Financial Transactions Reporting Act, No. 6 of 2006

(1) Every Institution shall be required to-

(a) Appoint a Compliance Officer who shall be responsible for ensuring the Institution's compliance with the requirements of this Act;

(b) Establish and maintain procedures and systems to-

(i) Implement the customer identification requirements

(ii) Implement procedures for the record keeping and retention requirements

(iii) Implement the process of monitoring required

(iv) Implement the reporting requirements in relation to auditors ;

(v) Make its officers and employees aware of the laws relating to money laundering and financing of terrorism; and

(vi) Screen all persons before hiring them as employees.

(c) Establish an audit function to test its procedures and systems for the compliance with the provisions of this Act;

(d) Train its officers, employees and agents to recognize suspicious transaction.

(2) **The provisions of subsection (1) shall not apply to an individual who, in the course of carrying on his or her business, does not employ or act in association with any other person.**

(3) An Institution shall ensure that its foreign branches and subsidiaries adopt and observe measures consistent with Parts I, II and Ill of this Act to the extent that local laws and regulations permit and where the foreign branch or subsidiary is unable to adopt and observe such measures, to report the matter to the relevant supervisory authority or in the absence of a supervisory authority to the Financial Intelligence Unit.

PREVENTION OF MONEY LAUNDERING ACT

15.(1) Any person who knows or has reason to believe from information or other matter obtained by him in the course of any trade, profession, business or employment carried on by such person, that any property has been derived or realised from any unlawful activity, shall disclose his knowledge or belief as soon as is practicable, to the Financial Intelligence Unit.

(2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence under this Act, and shall on conviction after trial before the High Court be liable to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment

13.(1) Where a person is convicted of the offence of money laundering, the Court convicting such person shall, subject to the provision of subsections (2) make Order that any movable or immovable property of such person derived or realised, directly or indirectly from any unlawful activity, be forfeited to the State free from all encumbrances.

(2) In determining whether an Order of forfeiture should be made under subsection (1), the Court shall be entitled to take into consideration the fact whether such an Order is likely to prejudice the rights of a bona fide purchaser for value or any other person who has acquired, for value, a bona fide interest in such property

Anti-Money Laundering/Countering Financing of Terrorism Suspicious Indicators (Red Flags) for Real Estate Agents: 2018

(a) Customer procurements/purchases property in the name of a nominee such as an subordinate or a relative (other than a spouse), or in the name of minors or incapacitated persons or other persons who do not have the economic capacity to carry out such purchases.

(b) Customer does not want to put their name on any document that would connect them with the property or submit different names on offer letters to purchase, or closing documents and deposit receipts.

(c) Customer tries to hide the identity of the beneficial owner or requests that the transaction be structured to hide the identity of the beneficiary.

(d) Purchaser is a shell company and a representative of the company who do not like to disclose the identity of the beneficial owner.

(e) Address given by customer is unknown, believed to be false, or simply a correspondence address.

(f) Customer does not satisfactorily explain the last-minute substitution of the purchasing party's name.

(g) Customer pays substantial down payment in cash and balance is funded by an unusual source or offshore bank.

(h) Customer purchases property without inspecting it. It realizes that the customer needs to fund for the property and not much worries about the location or any other characteristic of the property.

(i) Customer purchases many properties in a short time period, and seems to have few concerns about the location, condition and anticipated repair costs, etc., of each property.

(j) Customer is known to have paid large remodeling or home improvement invoices with cash, on a property for which property management services are provided.

(k) Transaction does not match the business activity known to be carried out by the customer.

(l) Transaction is entered at a value significantly different (much higher or much lower) from the real or market value of the property.

(m) Property is sold in a series of successive transactions each time at a higher price between the same parties.

(n) Buyer takes on a debt significantly higher than the value of the property.

(o) Customer suddenly cancels / aborts transaction and requests refund either back to himself/herself / itself or to a third party.

(p) Customer pays for the purchase entirely in cash (to include electronic funds transfers), especially when such a purchase is large or does not match the known profile of the customer, and especially when the purchase funds are transferred from an offshore jurisdiction

SOME ISSUES TO BE CONSIDERED FOR A SUSPICIOUS TRANSACTION REPORT

- What is the nature of the suspicion?
- What offenses may have been committed?
- What transactions, attempted transactions, behaviours, facts, belief and circumstances are involved and relevant to the suspicion?
- Who are the natural and legal persons involved?
- Who are the beneficial owners?
- What are their identifiers such as names, ID numbers, registration numbers, etc.?
- What are their addresses?
- What are their occupations or lines/types of business?
- Who are their employers?

- What political exposure do they have, if any?
- How are they connected with each other and with the transactions?
- What were their roles in the transactions?
- What property is involved?
- What is the nature and disposition and estimated value of involved property?
- When and where did the transactions or attempted transactions or behaviours occur?
- How, if at all, do the timing or location of the transactions contribute to the Financial Institution's suspicion?
- Why do these facts and circumstances support the suspicion?
- How was the suspicion formed?
- What triggers or indicators are present?
- What actions have been taken by the reporting Financial Institution?
- What related STRs have the Financial Institution already submitted?
- What red flags are present?
- What deviations from expected activities have taken place?

In terms of the **Trusts (Amendment) Act, No. 6 of 2018** upon creation of an express trusts under Section 6 of the Trusts Ordinance in relation to any immovable or movable property, the trustee of such trusts is required to obtain and maintain information as specified in the Regulation.

Accordingly, the **Trusts (Information Relating to Express Trusts) Regulations 2018**, a regulation prescribing the information to be maintained by trustees was issued by the Minister of Justice by way of Gazette Extraordinary No. 2108/10, dated January 28, 2019.

According to these regulations, trustees are required to maintain, verify and update the following information relating to express trusts,

1. Information about the trust (name , address, purpose),
2. Information about the author of trust, trustees and co-trustee/s (name, identification, address, etc)
3. Information of the beneficiary/beneficiaries/ class of beneficiaries (name, identification, address)
4. Information of any other person engaged in the execution of the trust
5. Information of any beneficial owners

At the same time, trustees are required to submit the information maintained above to the Registrar of Lands of the area, within which, the trust property is situated and to the Registrar General.

SINGAPORE

AML and CFT practice rules are found in Part VA of the Legal Profession Act, Legal Profession (Prevention of Money Laundering and Financing of Terrorism) Rules 2015 and the Law Society's Council Practice Direction.

The above practice rules require law practices and lawyers to carry out **'Know Your Client'** identity and **'Know Your Client Matter'** checks when preparing for or carrying out any transaction concerning certain matters.

PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM)

RULES 2015

PART 1 - PRELIMINARY

Rule

1. Citation and commencement
2. Definitions
3. Prescribed types of advocates and solicitors and foreign lawyers

PART 2 - CUSTOMER DUE DILIGENCE MEASURES

4. Prescribed customer due diligence measures
5. Client suspected of money laundering or financing of terrorism
6. General customer due diligence measures in relation to client
7. General customer due diligence measures in relation to individual purporting to act on behalf of client
8. General customer due diligence measures in relation to entity or legal arrangement
9. General customer due diligence measures in relation to business relationships
10. Specific customer due diligence measures for legal practitioners who act as trustees
11. Timing of certain customer due diligence measures
12. Risk based approach
13. Enhanced customer due diligence measures
14. Existing clients
15. Inability to complete customer due diligence measures
16. Tipping-off
17. Performance of customer due diligence measures by third parties
18. Internal controls and foreign branches and subsidiaries

PART 3 KEEPING OF RECORDS

19. Period of maintenance of documents and records relating to relevant matters
20. Period of maintenance of documents and records obtained through customer due diligence measures
21. Sufficiency of documents and records relating to relevant matters
22. Documents and records to be made available to Council

PART 4 - NEW TECHNOLOGIES, SERVICES AND BUSINESS PRACTICES

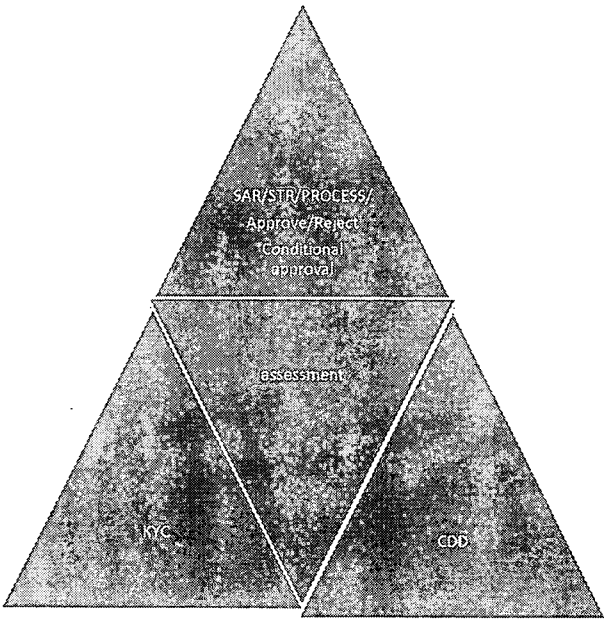
23. Identification and assessment of risks from new technologies, etc.
24. Management and mitigation of risks from new technologies, etc.

PART 5 - MISCELLANEOUS

25. Basis for determination whether to file suspicious transaction report
26. Powers of inspection by Council

27. Prescribed types of disciplinary proceedings
28. Prescribed types of regulatory actions
29. Practice directions, guidance notes and rulings
30. Savings and transitional provisions

U.K. Law Society
Anti-Money Laundering
Guidance for the Legal Sector
March 2018



FUNDAMENTAL PRINCIPLES

KYC AND CDD CRITICALLY IMPORTANT

KNOWLEDGE OR REASONABLE SUSPICION SHOULD LEAD TO DISCREET CHECKS AND NOTIFY F.I.U. IF DEEMED NECESSARY

CHECK SOURCE OF INCOME AND PROFILE OF PARTIES

DO NOT TAKE CHANCES

MAKES NOTES AND RETAIN THEM

ALWAYS ERR ON THE SIDE OF PRECAUTION

FUTURE ACTIONS

HAVING INCLUDED LAWYERS IN THE CATEGORY OF DESIGNATED NON-FINANCE BUSINESS. F.I.U. IS DUTY BOUND UNDER THE FINANCIAL TRANSACTIONS ACT OF 2006 TO ENACT SPECIFIC RULES IN CONSULTATION WITH BAR ASSOCIATION ETC.

SRI LANKA WILL CONTIUE TO REMAIN UNDER THE FATF'S RADAR UNTIL THIS AND OTHER MEASURES ARE TAKEN

RULES ENACTED IN SINGAPORE AND U.K. SERVE AS A GOOD TEMPLATE TO DEVELOP NEW RULES FOR SRI LANKAN LAWYERS

A DELICATE BALANCE MUST BE STRUCK BETWEEN THE NEED FOR DUE COMPLIANCE AND NOT IMPOSE ANY IMPRACTICAL OBLIGATIONS