

## Recognition and Reporting of Suspicions

FATF Recommendation 14 states:

*Financial institutions should pay special attention to all complex, unusual large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.*

Legislation in each particular country will determine whether financial institutions are required to undertake routine reporting of transactions above a specified financial threshold (i.e. Compulsory Transaction Reporting) or only to report knowledge or suspicion of money laundering (reporting of suspicions), or both.

Countries with CTR requirements in place will generally also require the reporting of suspicions in line with the FATF Recommendations.

### 11.1 Compulsory Transaction Reporting

The basis for CTR is set out in section 6.4. The reporting limits, the information to be provided and the types of financial institutions and business activities within the scope of the requirements will be laid down in the legislation. As with Exchange Control Regulations, the system is mechanistic, strictly controlled and the penalties for breaching the requirements can be high.

### 11.2 The Obligation to Report Knowledge or Suspicion of Money Laundering

International standards currently require all

financial sector staff to report information or other matters which come to their attention and which, in their opinion, give rise to knowledge or suspicion of money laundering.

#### 11.2.1 What is Meant by Knowledge?

Knowledge has been defined in legal statutes to include the following:

- ❖ actual knowledge;
- ❖ wilfully shutting one's mind to the obvious;
- ❖ wilfully and recklessly failing to make such enquiries as a reasonable and honest person would make;
- ❖ knowledge of circumstances which would indicate facts to an honest and reasonable person;
- ❖ knowledge of circumstances which would put an honest and reasonable person on enquiry.

While this might not be legally applicable in all jurisdictions, it provides a useful guide:

#### 11.2.2 What is Meant by Suspicion ?

Suspicion is personal and subjective and falls far short of proof based on firm evidence. Suspicion has been defined by the courts as being beyond mere speculation and based on some foundation, i.e. 'A degree of satisfaction not necessarily amounting to belief at least extending beyond speculation as to whether an event has occurred or not' and 'Although the creation of suspicion requires a lesser factual basis than the creation of a belief, it must nonetheless be built upon some foundation'.

Because financial sector staff are not trained to be detectives, a person who believed that a transaction was suspicious would not be expected to know the exact nature of the criminal offence or that the particular funds were definitely those arising from the crime.

### 11.3 Know Your Customer – the Basis for Recognising Suspicions

As stated in Chapter 10, satisfactory know-your-customer procedures, for example identification evidence and effective use of know-your-business information, provide the foundation for recognising unusual and suspicious transactions. **Where there is a business relationship, a suspicious transaction will often be one that is inconsistent with a customer's known, legitimate activities or with the normal business for that type of account.** Therefore, the first key to recognition is knowing enough about the customer and the customer's normal expected activities to recognise when a transaction, or series of transactions, is abnormal.

Sufficient guidance must be given to staff to enable them to recognise suspicious transactions. However, the type of situations giving rise to suspicions will depend on an institution's customer base and range of services and products.

Questions that staff might be encouraged to consider when determining whether an established customer's transaction could be suspicious are:

- ❖ Is the size of the transaction consistent with the normal activities of the customer?
- ❖ Is the transaction rational in the context of the customer's business or personal activities?
- ❖ Has the pattern of transactions conducted by the customer changed?
- ❖ Where the transaction is international in nature, does the customer have any obvious reason for conducting business

with the other country involved?

Examples of what might constitute suspicious transactions are given in Appendix E. These are not intended to be exhaustive and only provide examples of the most basic ways by which money may be laundered. However, identification of any of the types of transactions listed should prompt further investigation and be a catalyst towards making at least initial enquiries about the source of funds.

Financial institutions might also consider monitoring the types of transactions and circumstances that have given rise to suspicious transaction reports by staff, with a view to updating internal instructions and guidelines from time to time.

### 11.4 Reporting of Suspicions

Legislation will generally contain a provision for staff to report suspicions of money laundering to a Money Laundering Reporting Officer. Some financial institutions may choose to require that such unusual or suspicious transactions be drawn initially to the attention of supervisory management to ensure that there are no known facts that will negate the suspicion before further reporting to the MLRO or an appointed deputy.

All financial institutions should ensure that:

- ❖ each relevant employee knows the identity and responsibilities of the MLRO;
- ❖ each relevant employee knows to which person s/he should report suspicions;
- ❖ there is a clear reporting chain under which those suspicions will be passed without delay to the MLRO;
- ❖ all internal reports reach the office of the MLRO, even if a supervisor or manager believes the suspicion is not valid.

It is normal under most money laundering legislation that once an employee has reported

her/his suspicion to the 'appropriate person', s/he has fully satisfied the statutory obligation.

#### 11.4.1 Internal Reporting Procedures

**Reporting lines** should be as short as possible, with the minimum number of people between the person with the suspicion and the MLRO. This ensures speed, confidentiality and accessibility to the MLRO. Once the reporting procedure has commenced, it is advisable for it to be followed through to the MLRO, even if the suspicion has been set aside by management within the reporting chain. In such cases, the report should be annotated with the comments of the supervisor or manager giving the reasons that remove the suspicion. No person other than the MLRO, the Deputy MLRO or the person nominated by the MLRO to consider internal reports should decide that a suspicion is without foundation and will not be reported to the National Criminal Intelligence Service (NCIS).

**Larger groups** may choose to appoint assistant MLROs within divisions or subsidiaries to enable the validity of the suspicion to be examined before being passed to a central MLRO. In such cases, the role of the assistant MLROs must be clearly specified and documented. All procedures should be documented in an appropriate manual and job descriptions should be drawn up.

**All suspicions** reported to the MLRO should be documented (in urgent cases this may follow an initial discussion by telephone). In some organisations it may be possible for the person with the suspicion to discuss it with the MLRO and for the report to be prepared jointly. In other organisations the initial report should be prepared and sent to the MLRO.

Reports from staff should include:

- ❖ the name of the reporting person, department or branch;
- ❖ full details of the customer;
- ❖ as full a statement as possible of the

information giving rise to suspicion;

- ❖ the date when the person with the suspicion first received the information and became suspicious;
- ❖ the date of the report.

The MLRO should acknowledge receipt of the report and at the same time provide a reminder of the obligation to do nothing that might prejudice enquiries, i.e. 'tipping off'. All internal enquiries made in relation to the report, and the reason behind whether or not to submit the report to the authorities, should be documented. This information may be required to supplement the initial report or as evidence of good practice and best endeavours if, at some future date, there is an investigation and the suspicions are confirmed.

#### 11.5 The Role of the Money Laundering Reporting Officer

The type of person appointed as MLRO will vary according to the size of the financial institution and the nature of its business, but s/he should be sufficiently senior to command the necessary authority. Larger institutions may choose to appoint a senior member of their compliance, internal audit or fraud departments. In small institutions, it may be appropriate to designate the Chief Executive or Chief Operating Officer. When several subsidiaries operate closely together within a group, there is much to be said for appointing an overall Group MLRO.

Legislation may impose on the MLRO a significant degree of responsibility. S/he is required to determine whether the information or other matters contained in the transaction report received give rise to a knowledge or suspicion that a customer is engaged in money laundering.

In making this judgement, the MLRO should consider all other relevant information available within the institution concerning the person or business to whom the initial report

relates. This may include a review of other transaction patterns and volumes through the account or accounts in the same name, the length of the business relationship and referral to identification records held.

If, after completing this review, s/he decides that the initial report gives rise to a knowledge or suspicion of money laundering, then s/he must disclose this information to the appropriate authority.

The MLRO will be expected to act honestly and reasonably and to make her/his determinations in good faith using all the information available. Providing that the MLRO or an authorised deputy does act in good faith in deciding not to pass on any suspicions report, there will be no liability for non-reporting if the judgement is later found to be wrong.

#### 11.5.1 Formal and Documented Deliberations of the Money Laundering Reporting Officer

If the suspicion raised is an 'open and shut case', the MLRO should report it immediately. In other cases the MLRO is required to evaluate the substance of the suspicion by way of confidential enquiry within the organisation. The MLRO is not required to undertake any enquiries with other organisations. The MLRO may request an appropriate person to make discrete enquiries of the customer, taking care to avoid any risk of tipping off.

Suspicion falls far short of proof based on firm evidence. It may, however, have substance in many ways and may be based on the nature of the business being offered or an unusual transaction.

The MLRO's enquiries must therefore be appropriate to the circumstances of the case. As a basis of approach, it is sensible for the MLRO to enquire into:

- ❖ client identification and location;
- ❖ type of business or pattern of business;
- ❖ length of business relationship;

- ❖ source and destination of funds;
- ❖ existence of earlier suspicions.

After making the enquiry, the MLRO must decide whether or not to make a report to the authorities.

The enquiries undertaken, the decision and the reasoning behind the decision should all be documented and retained securely. This information is required either for the report to the authorities or as evidence of good practice and best endeavour if, at some future date, there is an investigation and the suspicions are confirmed.

Any documents called for by the MLRO as part of the enquiry should be listed and retained.

### 11.6 Reporting Suspicions to the Authorities

FATF Recommendation 15 requires that:

*If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.*

National legislation will determine the central reporting point within the various agencies. This is usually a financial intelligence unit within the law enforcement agency but might be within the Central Bank.

If there is a standard report form, it should be used whenever possible. On all occasions, when a report to the authorities has been made by telephone, it should be confirmed in writing.

The reporting institution should provide as much information as possible with regard to the suspicion, i.e. give the full story, or as much of it as is known.

The information provided might usefully be structured to show information and suspicion initially reported to the MLRO, the enquiries undertaken by the MLRO and the MLRO's reason for disclosure.

'One line' explanations of suspicion with reference to documents attached are not helpful; those receiving the reports may not be

financial experts, and the documents themselves will often require interpretation.

### 11.6.1 Reporting Suspicions – the Tax Smokescreens

Initially, anti-money laundering legislation was confined to the proceeds of drug trafficking. The international move to ‘all crimes anti-money laundering legislation’ has changed the scope of crimes which are reported, although many countries do not include tax evasion.

Criminals soon learned that if they explained that an unusual or large cash transaction was being handled that way ‘for tax reasons’, financial sector staff asked no further questions. Consequently, in July 1999 the FATF added a new interpretative note to Recommendation 15, as follows:

*In implementing Recommendation 15, suspicious transactions should be reported by financial institutions regardless of whether they are also thought to involve tax matters. Countries should take into account that, in order to deter financial institutions from reporting a suspicious transaction, money launderers may seek to state inter alia that their transactions relate to tax matters.*

### 11.6.2 Secure Record Retention

All copies of reports and records should be retained and stored securely. The minimum requirement is lockable (and locked) filing cabinets with known key distribution.

It is suggested that the original of all internal reports should be filed upon receipt, with a copy for the MLRO’s use. The MLRO’s own ‘suspicion evaluation record’ should be treated similarly – the original should remain on file and any subsequent work should be done on a copy.

Records of suspicions raised internally but not disclosed should be retained for five years from the date of the transaction/suspicion.

Records of suspicions passed on to the reporting authority, but which the reporting

authority have not advised are of interest, should be retained for a similar period.

Records of suspicions passed on to the reporting authority which are of interest should be retained until the reporting authority has advised that they are no longer needed. If this causes any difficulties, the difficulties should be communicated to the reporting authority or the investigating officer.

### 11.6.3 Protection of Staff against Breach of Confidentiality

Normally financial sector staff would not divulge information concerning the accounts of transactions of their customers to third parties. Often banking secrecy legislation has rendered such action a criminal offence. The FATF has recognised this as an important issue and, as part of the national strategy, FATF Recommendation 16 states:

*Financial sector staff should be protected by law against civil or criminal liability if they report a suspicion in good faith, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.*

## 11.7 Confidentiality of Disclosures

One of the most important requirements of a suspicious transaction reporting regime is that reports made are treated in absolute confidence. It is essential that the customer, or prospective customer, should never become aware that a report has been made. One of the reasons for this is to guard against the risk of tipping off a customer that his/her account or transactions is/are under investigation.

FATF Recommendation 17 states:

*Financial institutions, their directors, officers and employees should not or, where appropriate, should not be allowed to warn their customers when information relating to them is being reported to the competent authorities.*

Internal confidentiality of reports is also impor-

tant and for this reason the internal reporting chain should be kept as short as possible. The more people in the chain who are aware of a suspicious disclosure, the greater the chance of deliberate or inadvertent 'tipping off'.

In most countries, the confidentiality of disclosures will normally be honoured by law enforcement agencies during their investigations. If the suspicion is proved to be valid, the law enforcement agency will serve a court order on the financial institution to obtain the information required to enable a prosecution to be developed. This usually forms the evidence that will be presented in court.

### **11.8 Liaising with the Investigating Agencies**

The MLRO will normally be appointed as the central point of liaison with the authorities concerning disclosures and issues arising out of them.

In the event that the disclosure report is of

immediate interest to the authorities, either because an investigation is already underway or an arrest is imminent, or because there is concern that the suspicion funds may be paid away, the authorities may make a specific request concerning the account or the particular transaction. Permission to undertake the transaction or continue operating the account may in fact be required following a suspicious disclosure.

FATF Recommendation 18 states:

*Financial institutions reporting their suspicions should comply with instructions from the competent authorities.*

In the event that a financial institution wishes to close out an account or a relationship following one or more suspicion reports, the MLRO should liaise with the investigating agencies and agree what course of action should be taken, or what explanation can be given to the customer to avoid tipping off the customer that a report has been made.