Executive summary

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INTRODUCTION

- The Basel Institute on Governance has conducted a comparative study of the anti-money laundering systems in Singapore, Switzerland, USA and the UK, each of which is an important financial centre in particular in cross-border banking.
- The study starts out by examining the international standards, tracing their historical and political roots and pointing out the driving forces that have shaped this topic in recent years.
- Thereafter, the four financial centres are reviewed from their individual economic perspectives and assessed for their domestic importance as well as their position internationally.
- Substantive legal reviews of the current position in each country were conducted *in situ* according to a set format which covered criminal and supervisory regulations in relation to anti-money laundering as well as mutual legal assistance and confiscation.
- In the final section of the study, the research in relation to the four countries is analysed and subjected to critique, with final conclusions rounding it off.

THE INTERNATIONAL STANDARDS AGAINST MONEY LAUNDERING

At the international level, the starting point for the development of anti-money laundering principles was the ‘war on drugs’, which culminated in the UN treaty criminalizing money laundering and establishing the range of topics for all further legal developments. The position changed dramatically in the 1990s with the expansion of money laundering with all serious crimes as predicate offences, including the abuse of power so that it has now become a tool in the repatriation of assets.

Soft law, that is, non-binding recommendations that are primarily addressed to governments and regulators rather than the industry itself, has

developed in tandem with international law. The focus here has been on customer due diligence standards and detailed work has been produced by the Basel Committee on Banking Supervision, and the Financial Action Task Force. The original 'Forty Recommendations' of this latter body were revised to cover money laundering in relation to all serious crime and were revised further in 2003.

The Recommendations comprise the international standards for countries and require the implementation of; criminal laws, rules to prevent money laundering, supervisory rules on the financial and non-financial sectors and provisions for international co-operation. Following the terrorist attacks in the USA, this body extended its remit by addressing the problems of the financing of terrorism and developing recommendations specific to this problem.

The Financial Action Task Force has also exerted pressure on non-members through its work on non-co-operative countries and territories which defined criteria consistent with its Recommendations for jurisdictions defined as 'offshore centres'.

Recent international initiatives have shifted towards a risk based approach which takes greater account of the practical application of standards by the industry itself. The approach also distinguishes between obligations in the client acceptance procedure and ongoing monitoring.

SINGAPORE

- Singapore has developed as a financial centre in a short time and has recently targeted the development of asset management as an area for growth. This has led to dedicated policies and incentives to make Singapore attractive to investors and fund managers alike. Features that contribute to Singapore's competitive advantage include a strong bank secrecy law, the availability of numbered accounts (albeit controlled), tax incentives as well as factors such as a stable government, a relatively strong economy and a highly educated population.
- In response to international criticism from the Financial Action Task Force, legislation was introduced to strengthen anti-money laundering laws which were originally modelled on UK laws, as well as introduce mutual legal assistance (so far only a treaty with the USA), and develop laws on confiscation. The penalties on conviction for money laundering offences are severe and include the possibility of substantial prison sentences as well as fines. However, these sanctions have yet to be applied. Tax offences are not included amongst the list of predicate offences for money laundering.
- The single regulator is the Monetary Authority of Singapore which has

issued detailed guidelines for the financial services industry, covering: the development of compliance programmes that include Know Your Customer procedures, suspicious transaction reporting, staff training, record keeping and compliance with the laws. The Association of Banks in Singapore has endorsed the Wolfsberg Principles as the recommended standard for private banking.

- There are no statistics on confiscation or criminal cases reported under the anti-money laundering legislation. Whilst Singapore looks strong on paper, questions as to implementation and effective international legal assistance are open, not least because legislation is still relatively new.

SWITZERLAND

- Banking in Switzerland has a long tradition and is a mainstay of the economy. Contributing factors to the success of this industry include the political and economic stability of the country, the traditional convertibility of the Swiss franc and comprehensive bank secrecy laws.
- Swiss legislation has been ‘crisis driven’ and has aimed to safeguard the reputation of Switzerland as a financial centre and accounts for the early development of customer due diligence rules for the banks, which was achieved on a private law basis – not through criminal law.
- The criminal law on money laundering is broadly drafted with all serious offences as predicates. There is also an offence for lack of due diligence in identifying clients and beneficial owners. Swiss law has a dual system of a right and an obligation to notify suspicious transactions, which results in extensive in-house vetting of clients both prior to a business relationship and on an ongoing basis. At present there is no requirement for banks to report if they reject a client prior to the opening of a business relationship.
- Mutual legal assistance procedures have been amended and improvements acknowledged by requesting states. However, tax evasion other than tax fraud is not a criminal offence in Switzerland; it is therefore not possible to afford legal assistance in this area.
- Self Regulatory Organizations have been set up to implement anti-money laundering regulations, and the law distinguishes between regulated entities, unregulated intermediaries participating in an SRO and intermediaries that are directly under the supervision of the Control Authority of the Ministry of Finance. The system to integrate non-bank financial intermediaries has proved difficult in practice.
- Statistics indicate that whilst there are relatively fewer notifications of suspicious transactions, they typically result in a criminal prosecution.

UK

- Anti-money laundering law and regulation in the UK has been slow in developing considering the importance of London as a financial centre. To date the rules have focused on the domestic retail market and have not taken account of the international significance of the UK market.
- The UK criminal law has been overhauled by the Proceeds of Crime Act, in force since early 2003. This law consolidates, updates and expands all earlier anti-money laundering legislation. The predicate offences are expanded to cover all serious crimes, rules on reporting suspicious transactions have been strengthened with clear sanctions for failing to report and objective standards to be met when determining when to report. However, banks will continue to face a dilemma in this area facing both the risk of criminal liability (tipping-off) or civil liability to the client (breach of contract). The new law creates a new civil forfeiture regime which is aimed at making confiscation effective.
- The efficacy of mutual legal assistance is still questionable and may be subject to further review in the future.
- Regulatory law is now in the hands of a single entity, the Financial Services Authority which has adopted the risk based approach in its dealings with the industry and in developing its guidelines. There remain questions as to whether the Know Your Customer provisions are sufficiently implemented to tackle beneficial owners of discretionary trusts and other similar tools that may be misused for money laundering purposes.
- Statistics reveal that an 'early warning system' is in operation, however the large number of notifications are not followed through in the criminal justice system, in addition the level of confiscation has been very low. Whether the new civil forfeiture scheme ameliorates the position without breaching human rights legislation will only emerge over time.

USA

- The most powerful economy in the world and a pioneering and proactive international player in combating money laundering, the USA also has a long history of dealing with domestic money laundering ranging from measures against organized crime, the war on drugs and more recently in order to combat terrorism with the 'Patriot' Act. The system though does not take sufficient account of the international significance of the US market, and continues to concentrate on the placement stage of money laundering with the emphasis on controlling cash transactions.

- Criminal law in relation to anti-money laundering in the USA is rigorous and threatens long prison sentences, drastic forfeiture as well as imposing stringent reporting requirements. The regulatory system though is uncharted and complex, relying extensively on self regulation with uneven coverage especially in relation to Know Your Customer rules for non-banking financial institutions.
- Civil forfeiture has been expanded to cover all predicate offences which cover hundreds of federal felonies, tax offences may also serve as a predicate offence. For mutual legal assistance in extradition to another country 'probable cause' has to be shown, but less formality is required for assistance in relation to money laundering, and no treaty is required.
- Statistics on convictions indicate steady numbers of offenders being given prison terms, and statistics on civil and criminal forfeiture reveal relatively modest sums compared to the economic significance of the US economy and the size of the problem.

CONCLUSIONS

- A convergence of approaches is developing between the most important international actors (that is, the Basel Committee on Banking Supervision and the Financial Action Task Force) and the financial industry itself, this drive to level the playing field so as to diminish regulatory arbitrage is manifested in the risk based approach. As a result, concurrent private sector initiatives are likely to continue to develop both internationally and nationally as the approach continues to be adopted by regulators at both levels.
- The risk based approach entails the sharing of responsibility for the development of rules that are not only operable but also effective in combating money laundering techniques. This participative approach is a move away from self-regulation but it affords both sides flexibility, empowers the industry to address the problems in the most cost effective way and is solution oriented.