



Siobhain Egan

segan@lewisnedas.co.uk
+44 (0) 207 387 2032

Trade-Based Money Laundering: The Next Big Headache for Financial Institutions

By Siobhain Egan

Lewis Nedas Law
Solicitors

Money laundering is rarely out of the news these days. There appears to be a renewed focus by international regulators on trade-based money laundering (TBML). There is nothing new about TBML; it has been going on for decades. For example, the Mexican drug cartels are experts in this area, following the example of their Colombian counterparts. It is a sophisticated and multifaceted form of money laundering, defined by US regulators as, “The abuse of commerce in order to move money across economic, political and geographical borders.”



FinCEN has recently issued new guidance, raising awareness about the effect of Mexico’s US currency restriction, which they feel is encouraging criminal syndicates to rely on TBML, and FinCEN are warning financial institutions to have a heightened response to this issue. The FCA have brought in new guidance, effected 12 June 2014, on the issue of banks’ control of financial crime risks in trade finance

following its July 2013 thematic review.

The basic principle of trade-based money laundering centres on mis-invoicing. If the launderer wants to bring money into the country he will undervalue imports or overvalue exports. In order to get money out of the country he will do the exact opposite. The more sophisticated money laundering operations will be set up using a shell company in a secret offshore tax haven (though frankly there are less and less of these around these days). The shell company will then use a re-invoicing servicing firm to purchase the goods at an increased price and

charge the importer the true price. The international financial authorities and regulators are now focusing on trade, the black economy, and alternative remittance/currency exchanges. The latter have proved to be a huge problem and many of the major banks have removed or tried to remove themselves from that sector and those jurisdictions in which alternative remittance exchanges are prevalent, for example Barclays and

Somalia. Hawala and BMPE Systems in Latin America are strongly believed by the US authorities in particular to be annually laundering billions of dollars.

In their January 2011 report, US Homeland Security believes that money launderers that rely on TBML are assisted by a number of factors:

1. The massive amount of global daily trade;
2. Financial diversity, i.e. the wide variety of financial controls found in different countries, the diverse financial arrangements made between governments, and the innumerable different types of financial deals found in international commerce;
3. The co-mingling of illegal and illicit funds and trade items;
4. The low risk of detection and limited government understanding and resources to detect suspect trade transactions.

This is a huge problem for financial institutions and their AML

compliance regimes. The FCA’s thematic review found that, “There was an inconsistent approach to risk assessment and only a few banks had conducted a specific trade finance money laundering risk assessment.”

As a result, the ICC (International Chamber of Commerce) ‘pushed back’ and suggested that those banks financing trade should be regulated less stringently than those involved in other aspects of finance. The ICC said that the enforcement of anti-money laundering regulations by international regulators could mean that banks will cut their lending for trade and exports in particular because of the eye-watering fines handed down by US regulators to banks such as Standard Chartered, Credit Suisse, HSBC and, more recently, BNP Paribas. The ICC says that AML regulations and compliance have meant the banks are sustaining higher operational costs for trade and export finance business.

Additionally the authorities, because time and resource restraints will naturally follow patterns of gigantic trades and maximum profit, acknowledge

that the clever and patient money launderer will execute small regular trades with minimal profit per each trade, and will remain under the radar.

Siobhain Egan is a lawyer specialising in the defence of fraud, financial crime and money laundering investigations and prosecutions. She also advises companies on AML compliance.

Reputation for high acquittal / overall success rates

Expert: disclosure; use of informants; serious fraud; s.2 interviews; insider dealing; money laundering; SAR reports; bribery and corruption; cyber-crime; AML; AB&C; tax and VAT investigations, tribunals, and prosecutions; corporate and white collar crime; Deferred Prosecution Agreements (DPAs); civil settlements; business (internal) investigations, regulatory matters, due diligence, dawn raids, and emergency response; privileged and protected documents & information; extradition; civil forfeiture and recovery; asset restraint and confiscation.

