

The risk based approach to Anti-money laundering

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Risk-based approach globally

◆ Global initiative

- Now supported by FATF through its Guidance June 2007 and subsequent sector guidance
- Wolfsberg Group 2006
- European Third Directive – including mutual recognition
- United Kingdom – Joint Money Laundering Steering Group for financial services

◆ Purpose

- The RBA is proposed to provide a more effective means of utilising resources for AML
- Relates to Customer due diligence – not reporting obligations 3.4 of the RBA indicates that for reporting obligations the RBA is not applicable
- Focus on high level principles and procedures

◆ The Philip Robinson rationale

- Led the way on the approach
- Rid the industry of the 'tick a box' administrative mentality
- *'Firms should be systematically identifying and managing their ML/TF risks'*
- *'Systems which prevent and detect crime [rather] than matters like the number of documents and utility bills collected'*

What does FATF envisage in its Guidance relating to the RBA

- ◆ Empowerment of industry
 - Industry charged with making its own risk assessments – guidance across sectors, sector specific for example financial services, legal professionals, accountants, real estate agents etc.
 - To make effective and proportionate use of resources
 - Win the ‘hearts and minds’ – show that the CDD initiative produces results
- ◆ Regulatory supervision – general principles
 - There will always be failure in CDD, regulators should look for systemic failure - which would necessitate a severe response
 - Weak compliance resources – AUSTRAC survey on compliance officers
 - No prohibition against high risk business provided procedures are in place
- ◆ Elements of a risk based approach
 - *‘enables financial institutions to exercise reasonable **judgement** with respect to their customers’* Part 1.12 FATF Guidance
 - *‘measures to prevent or mitigate money laundering or terrorist financing are commensurate with the risks identified’* Part 1.7 FATF Guidance

The FATF process relating to production of Guidance

◆ Guidance for legal professionals

- Representative bodies – International Bar Association, Council of Bars in Europe and American Bar Association
- 10 month process undertaken during 2008
- Negotiated outcome – differing priorities depending which group of lawyers were represented
- No reference to reporting obligations – an anathema to the CCBE

◆ Effectiveness

- FATF gave the lawyers the ‘pen’ but insisted on fundamental matters for example, identification of beneficial owners – more flexible on verification
- FATF played the ‘middle man’ in dealing with countries and jurisdictions
- Partnership was effective – divergence of views accommodated within FATF principles

◆ Application of RBA paragraph 114

- Identify each client on a timely basis
- Identify the beneficial owner
- Obtain information relating to the client’s business and circumstances

How is the RBA being applied in Australia

◆ Australian position

- Exists in form – but does it in substance?
- First generation system – reporting entities who have never had AML obligations
- Balance between being led – and being self determinative
- Regulator across all businesses and professions – what are the weaknesses of this?
- Certifications
- Designated services are codified
- What is necessary to verify
- Data required for SMRs

◆ Areas to address

- Greater partnership with industry
- Utilise industry knowledge regarding susceptibility
- Mutual recognition – New Zealand and larger APAC region - Barclays case

The way forward

◆ Way forward

- In other jurisdictions liberalised – not codified
- Codification in high-risk areas for example, political exposure
- The effect of the RBA having people evaluate the risks and make the *informed judgements*
- Level of maturity required by industry – not necessarily a reduction in resources
- *90% of your time on 10% of your clients*

◆ Public and private partnerships

- *‘national authorities, in partnership with its financial institutions need to identify the most appropriate regime’*
- Principle 5 of the Guidance - there should be information exchange between the public and private sector
- Harness the knowledge industry has in relation to their products
- Be adaptable and able to evolve – ensure Rules have flexibility to enable judgement and analysis