

Anti-Money Laundering in Russia



Tatiana Minaeva
Associate



Marina Aksenova
Associate

Tatiana Minaeva and Marina Aksenova
White & Case LLC, Moscow

According to John Walker's estimate on global money laundering in 1998, money laundering constituted 15 percent of the Russian GDP. In the same review Russia ranked third in both the top 20 origins of laundered money and in the top 20 destinations for laundered money.¹ Given such devastating statistics and the underdevelopment of Russian legislation on anti-money laundering, Russia was put on the blacklist of "tax havens" by the Financial Action Task on Money Laundering (FATF) in 2000. This action led to numerous discriminatory measures against Russian financial institutions. During the last few years, however, Russia has done a great deal to remedy the situation. One of the most important steps was Russia's ratification in 2001 of the Council of Europe Convention on Laundering, Tracing, Seizure and Confiscation of Proceeds from Crime (1990 Convention). One direct result of ratifying the Convention was the creation of national anti-money laundering legislation.

I. Overview of the New Legislation

Federal Law No. 115-FZ "On Combating Money Laundering

and the Financing of Terrorism" (Money Laundering Law) was adopted on February 1, 2002. The Money Laundering Law requires banks and a wide range of financial institutions to monitor and report to the government:

1. any transaction that equals or exceeds 600,000 Roubles (approximately 17,500 Euros) and involves or relates to: cash payments, individuals or legal entities domiciled in countries that do not participate in the international fight against money laundering, bank deposits, precious stones and metals, payments under life insurance policies, and/or gambling;
2. all transactions of extremist organisations or individuals included on Russia's domestic list; and
3. suspicious transactions.

Immovable property transactions are also subject to mandatory control if they are worth, or exceed 3,000,000 Roubles (approximately 84,500 Euros). The Law requires financial institutions to ascertain the actual identity of their customers and does not allow for the creation and maintenance of anonymously held accounts. It is worth noting that financial institutions are

exempt from legal responsibility for breach of any disclosure restrictions on confidential information when such a breach is necessary for compliance with the Money Laundering Law.

Upon implementation of the Money Laundering Law, a number of other laws were also amended, including the Criminal Code which defines money laundering as a crime, the Banking Law and the Securities Law which put in place a new system for reporting suspicious transactions. These amendments became effective in 2002 and 2003.

The enactment of the Money Laundering Law also prompted the establishment of the Financial Monitoring Committee (FMC), a new supervisory authority for monitoring transactions involving cash. The FMC has since been renamed the Federal Service for Financial Monitoring or FSFM. The FSFM is responsible for coordinating all of Russia's anti-money laundering and counter-terrorism financing efforts. It collects, processes, and analyses information about financial transactions. If it finds reasons to suspect money laundering, it forwards relevant information to the law enforcement agencies. The FSFM receives such information from the Central Bank of Russia (CBR), which supervises credit institutions; the Federal Insurance Supervision Service, which oversees insurance companies, entities managing non-government pension and investment funds, and entities buying and selling precious metals or stones; and the Federal Service for Financial Markets, which supervises professional participants in the securities sector.

II. Liability for the Breach of Anti-money Laundering Legislation

As a result of the implementation of the Money Laundering Law, liability for money laundering can be imposed by revocation of the bank's license, fines or even imprisonment of the responsible officers.

In Russia money laundering or the financing of terrorist activities is punishable by up to 15 years imprisonment. The amended Criminal Code defines money laundering as financial operations and other transactions with money or other property on a large scale obtained by criminal means for the purpose of giving lawful character to ownership, usage and disposal of the indicated

money and other property. According to the FSFM statistics, courts found 14 people guilty of money laundering in 2003; 419 in 2005 and 532 in 2006. Last year more than 140 money laundering cases were recorded in Russia whose illegal revenues totaled 289 billion Roubles (approximately 15 billion Euros).

Financial institutions can be subject to fines or the revocation of licenses for breach of the Money Laundering Law. Last year the CBR inspected 779 banks and applied preventive measures in 343 cases either in the form of fines or in the form of limitation on certain activities of the bank and 51 banks had their licenses revoked.²

III. Internal Difficulties

Despite the statistics showing that liability for money laundering is now being invoked regularly, and significant success in combating money laundering on the international level, Russia still faces many difficulties in tackling this problem.

The main obstacles primarily concern the lack of a proper framework to deal with such wider issues as corruption and organised crime prevention and deficiencies in the Money Laundering Law itself. For example, the threshold set by the Money Laundering Law for reporting an operation to the FSFM is probably too low because it creates an unmanageable workload for the banks obliging them to report on thousands of operations on a daily basis. The other problem connected with the Money Laundering Law is the lack of clear definitions in the law itself. For example, the term "suspicious transaction" is not defined, leaving space for its interpretation by financial institutions and other government bodies' employees. Despite the existence of the CBR's clarification letters, which do shed some light on what may be considered a "suspicious transaction", the chances of certain transactions being improperly qualified are very high. The lack of appropriate training for financial institutions and other government bodies' employees is another problem contributing to the improper qualification of the law and the misreporting of transactions.

It is worth noting that the software used by the financial institutions to track down and

Anti-Money Laundering in Russia

report the transactions in question is another cause for concern as the technology used is currently not coordinated. Furthermore, there is a lack of communication between the financial institutions, the supervisory authority and the law enforcement authorities, due to an insufficiently unified information framework that contains information on suspicious transactions or clients. Therefore, there is a need for all parties involved in combating money laundering to share one database and not to act as independent and often poorly-informed institutions.

Corruption still remains a big contributor to the problem of money laundering in Russia. According to the international organisation, Transparency International, Russia is one of the most corrupt countries in the world along with CIS countries, Pakistan, Tanzania and Nigeria.³ But regrettably the current political and economic climate does not encourage the creation of serious deterrents for organised crime in this area.

IV. Russia's Achievements

Notwithstanding the obstacles Russia faces internally regarding increased efforts to tackle money-laundering, Russia has already achieved improvements internationally since it was last included in the list of countries failing to cooperate in the international fight against money laundering.

Russia became a full FATF member in June 2003. During its first meeting as a fully fledged FATF member, Russia affirmed that it wanted to lead the fight against money laundering in the region. In October 2004, Russia successfully kicked off the Eurasian Group on Combating Legalisation of Proceeds from Crime and Terrorist Financing (EAG), which has as its members Belarus, China, Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan and Russia, and several other nations and multilateral organisations as observers, including the United States and United Kingdom. The EAG has a regional observer status with FATF and its main objective is the implementation of FATF recommendations on anti-money laundering. To date EAG has held six meetings which drew interim summaries and designed/developed further tactics for combating money laundering in the region.⁴

Finally, Russia holds a membership in the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL).

The FSFM plays an active role internationally. It has signed bilateral cooperation agreements with the financial intelligence bodies of the United States, Poland, Britain, the Czech Republic, Belgium, Italy, Panama, France, Estonia, Ukraine, Colombia, Cyprus, Finland, Latvia, Luxembourg, Switzerland, and the United Kingdom. These agreements serve *inter alia* as a basis for information exchange between the parties to enhance the effectiveness of combating cross border money laundering.

On the level of the international cooperation, however, Russia has yet to sign the new Council of Europe Convention on Laundering, Tracing, Seizure and Confiscation of Proceeds from Crime and on the Financing of Terrorism, which was created to update the 1990 Convention.

V. Some Conclusions

Although Russia became one of the most active players in combating money laundering, it still has some remaining "vulnerabilities" that need to be addressed, including official corruption, shell companies, untypical banks, and insufficient transparency in the financial sector and the corporate environment. According to a statement made in August 2007 by Viktor Zubkov, former head of the FSFM, criminals are using more than 120 different ways to launder money in Russia and sixty percent of illegal revenues are put into cash.

In March 2006, the US State Department's Report on Money Laundering and Financing Crimes cited Russia's development of a solid legislative and regulatory foundation for combating money laundering and terrorism financing and also noted its political will and capability to improve the region's capacity for tackling these crimes. It was noted, however, that Russia should also commit adequate resources to its regulatory and law enforcement entities in order to help them fulfil their responsibilities adequately. Regarding needed legislation, the report calls for a law that would enable law enforcement to seize not only business acquired with the proceeds of criminal activity, as at present, but also to seize

otherwise legitimate businesses that are used as “instruments” to commit or facilitate crime. But despite those criticisms, the report concludes, “Russia should continue to play a leadership role in the region with regard to anti-money laundering and counter-terrorist finance regime implementation”.⁵

There is no doubt that Russia has implemented significant reforms to its anti-money laundering system and shows a strong commitment to continue with reforms until this process is completed.

Marina Aksenova

Marina is an associate in our disputes group. Before joining White & Case in 2007 she worked at The United Nations International Criminal Tribunal for Former Yugoslavia in The Hague, Netherlands. She also has experience working with several NGOs. She graduated from the Civil Law Department of the International University, Moscow in 2004 and received an LL.M. degree in the University of Amsterdam in 2005. Qualified to practice law in the Russian Federation and speaks Russian, English and German.

Tatiana Minaeva

Tatiana has extensive experience in commercial arbitration and litigation and advises on corporate matters. She has represented clients in all levels of state courts and in international arbitration proceedings. Tatiana has experience advising on dispute resolution strategies in matters involving various and complex issues under multiple jurisdictions as well as experience assessing potential claims and risks. She has experience in addressing and resolving a wide range of legal issues, including in the areas of corporate, commercial, construction, consumer, banking and intellectual property law. Prior to joining White & Case in 2004, Tatiana worked as an associate in another international law firm, where she spent 6 years representing Russian and international clients in courts of all levels. Tatiana also has 2 years' experience working for a German law firm in Duesseldorf. She graduated from the Moscow State University for International Relations, International Law Faculty (1995) and the University of Cologne, Law Faculty (Master of Law, 1998). She is qualified to practice law in the Russian Federation and speaks Russian, English, German and French.

- 1 See John Walker Crime Trends Analysis. Accessed at: <http://www.johnwalkercrimetrendsanalysis.com.au/ML%20method.htm/> (last visited November 7, 2007).
- 2 See Central Bank of Russia. Accessed at: <http://www.cbr.ru/> (Last visited November 7, 2007).
- 3 See Corruption Perceptions Index 2007. Accessed at: <http://www.transparency.org/> (Last visited November 7, 2007).
- 4 See EAG website. Accessed at: <http://eurasiangroup.org/index-1.htm> (last visited November 7, 2007).
- 5 See USINFO.STATE.GOV. Accessed at: <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2006&m=March&x=200603011200331CJsamohT0.9108393> (last visited November 8, 2007).