
Anti-Money Laundering Tools

a. Domestic money laundering statutes and laws

i. Bank Secrecy Act of 1970

1. Cornerstone of bank reporting requirements
2. Congress enacted the BSA to help prevent banks and other financial service providers from being used as intermediaries for, or being used to hide the transfer or deposit of money derived from, criminal activity
3. The BSA created an investigative “paper trail” of suspicious activity for law enforcement by establishing regulatory reporting standards and requirements (e.g., “CTR”), and, through a later amendment, established record keeping requirements for wire transfers
4. OCC is responsible for BSA compliance examinations of the national banks. OTS is responsible for conducting BSA compliance inspections of the nation’s thrifts
5. Currency Transaction Report (CTR): Centerpiece of the BSA
6. Currency and Monetary Instrument Report (CMIR): Another major provision of the BSA
7. Criminal sanctions and civil penalties: Along w/ criminal sanctions, BSA provides for civil money penalties for noncompliance. The first such penalty (\$500,000) was imposed on the Bank of Boston for failing to file CTRs on 1,163 currency transactions valued at \$1.2 billion. As a result, it paid a \$500,000 fine
8. Constitutionality of the BSA: Upheld by the U.S. Supreme Court in Shultz, holding that bank customers possess no privacy interests protected by the Fourth Amendment in records of their affairs maintained at banks w/ which they deal

ii. Money Laundering Control Act of 1986 (MLCA)

1. Passed by Congress as a result of the failure of the BSA to either compel financial institutions to report money laundering or to provide the necessary prosecutorial “teeth” to prevent laundering
2. MLCA amended the BSA to enhance its effectiveness and to strengthen the government’s ability to fight money laundering by:
 - a. Making it a federal crime and allowing for both civil and criminal forfeitures of funds or property implicated in the laundering; and
 - b. Making structuring transactions to avoid BSA reporting requirements a criminal offense
3. MLCA consists of two parts:
 - a. § 1956: Laundering of monetary instruments
 - i. Three broad categories:
 1. (a)(1): Addresses domestic money laundering (i.e., transaction offenses)
 2. (a)(2): Addresses international money laundering (i.e., transportation offenses or crimes involving the movement of monetary instruments across U.S. borders)
 3. (a)(3): Crimes involving law enforcement sting operations
 - ii. Offenses actionable under § 1956(a)(1):
 1. First, whoever conducts a financial transaction involving dirty money w/ the

intent of promoting a “specified unlawful activity” is guilty of money laundering;

2. Second, whoever conducts a financial transaction to conceal the origins of dirty money is guilty of money laundering; and
 3. Third, whoever conducts a financial transaction w/ the intent to avoid a transaction reporting requirement is guilty of money laundering (penalizes the structuring of transactions to avoid reporting requirements, usually referred to as “smurfing”)
- iii. Specified unlawful activity: A term of art used in both § 1956 and § 1957 to describe the predicate offense to a money laundering charge. A predicate offense is a precondition to the statute’s applicability
 - iv. § 1956(a)(2): According to this section, whoever commits any of the aforementioned three offenses by transporting, transmitting, or transferring a monetary instrument or funds outside the U.S. is guilty of money laundering
- b. § 1957: Penalizes those who engage in monetary transactions in property derived from specified unlawful activity
- i. Monetary transaction broadly refers to any transaction through a financial institution, including the deposit, withdrawal, transfer, or exchange of funds or a monetary instrument
 - ii. Crucially, the prosecutor is not required to prove that the Def. knew that the offense from which the dirty money was derived was a specified unlawful activity

4. Criminal sanctions and civil penalties

a. Criminal sanctions

- i. Imprisonment for up to 20 years, and
- ii. Fines of up to \$500,000, or twice the amount laundered – whichever is greater

b. Civil sanctions: Include fines of up to \$10K and forfeiture

iii. Anti-drug abuse act of 1988

1. Amended the MLCA 1986 by authorizing the use of government sting operations to expose money laundering. Sting operations thus became the third category of offense under § 1956
2. In addition, the Act increased civil, criminal, and forfeiture sanctions for money laundering crimes and BSA violations, and permitted the Treasury to require financial institutions to file geographically targeted reports

iv. Annunzio-Wylie Anti-money laundering Act of 1992

1. Amended the BSA in several respects, most noticeably:
 - a. Compelled any financial institution and its officers to report suspicious transactions relevant to a possible violation of law, protected from civil liability for doing so by certain “safe harbor provisions”;
 - b. Allowed for a bank’s charter, insurance, or license to conduct business in the U.S. to be terminated if convicted of money laundering
2. Another important provision of the Act allowed the Secretary of the Treasury to require all financial institutions to institute money laundering training and to report suspicious transactions

3. Finally, the Act also amended the civil forfeiture statute to allow for the forfeiture of money in a bank account even when that money is not directly traceable to money laundering, so long as the account previously contained funds involved in or traceable to illegal activity

v. Money laundering Suppression Act of 1994 (MLSA)

1. Required regulators to develop enhanced examination procedures and to increase examiner training to improve the identification of money laundering schemes in financial institutions
2. MLSA is the primary legislative tool to regulate non-bank financial institutions, or NBFIs

vi. International Crime Control Act of 1996 (ICCA)

1. Designed to accomplish five objectives:
 - a. Deny safe haven to international fugitives,
 - b. Strike at the financial underpinnings of international crime,
 - c. Punish acts of violence committed against U.S. citizens abroad,
 - d. Respond to emerging international organized crime problems, and
 - e. Foster multilateral cooperation against international criminal activity

- vii. Money Laundering and Financial Crimes Strategy Act of 1998:**
Required the Secretary of the Treasury, in consultation w/ the Attorney General and state and local agencies, to coordinate and implement a national strategy to address money laundering

viii. USA PATRIOT Act

1. Evolved as a response by the U.S. government to combat international terrorism. The Act contains strong measures to prevent, detect, and prosecute terrorism and international money laundering
2. Signed into law on October 26, 2001, the Act establishes new rules and responsibilities affecting U.S. banks, other financial institutions, and non-financial commercial businesses
3. The Act:
 - a. Allows the Secretary of the Treasury to impose special measures on jurisdictions, institutions, or transactions that are of “primary money-laundering concern,”
 - b. Requires financial institutions to increase their due diligence standards when dealing w/ foreign private banking and correspondent accounts,
 - c. Prohibits correspondent accounts w/ foreign “shell” banks,
 - d. Expands the ability of the public and private sectors to share information related to terrorism and money laundering investigations,
 - e. Facilitates records access and requires banks to respond to regulatory requests for information within 120 hours,
 - f. Establishes minimum standards for customer identification at account opening and requires checks against government-provided lists of known or suspected terrorists,
 - g. Requires regulatory agencies to evaluate an institution’s AML record when considering bank mergers, acquisitions, and other applications for business combinations,
 - h. Extends an AML program requirement to all financial institutions,

- i. Increases the civil and criminal penalties for money laundering

ix. Federal Sentencing Guidelines

1. Used by judges, prosecutors, and defense attorneys to determine the possible sentence, or the range of a possible sentence, for any federal crime
2. Based on the concept that each type of offense should result in a sentence within a determined range, adjusted to the high or low end of the range, depending on certain known factors, including the defendant's criminal history
3. The U.S. Sentencing Commission was created by the Sentencing Reform Act of 1984. The Commission's original mandate was to enhance the ability of the criminal justice system to combat crime through an effective, fair sentencing system
4. The Commission sought to create a sentencing system that balanced uniformity in sentencing for similar offenses w/ proportionality in sentencing between different offenses. Over a three-year period, the Commission created various offense categories, a uniform range of sentences within a category, and proportionality between categories
5. The sentence for any category of offense had to fall within a designated range unless the case presented atypical features. In other words, a court can depart from the guidelines when it finds an aggravating or mitigating circumstance of a kind not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described
6. How the Guidelines work: The guidelines provide for an offense "base level," and then add or subtract from that base level to come up with a sentence or sentence range
7. Sentencing Guidelines for Money Laundering offenses

- a. Part S of Chapter 2 sets out an offense category entitled, “money laundering and monetary transaction reporting”
- b. There are three subparts based on the different types of money laundering offenses:
 - i. Parts 2S1.1 and 2S1.2 for MLCA offenses under sections 1956 and 1957, respectively, and
 - ii. Part 2S1.3 for BSA offenses under sections 5313-5324