



Federal Register

Tuesday,
September 20, 2005

Part II

Department of the Treasury

31 CFR Part 103

Finding That Banco Delta Asia SARL Is a Financial Institution of Primary Money Laundering Concern; Notice

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Imposition of Special Measure Against Banco Delta Asia SARL; Proposed Rule

DEPARTMENT OF THE TREASURY**Finding That Banco Delta Asia SARL Is a Financial Institution of Primary Money Laundering Concern**

AGENCY: The Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of finding.

SUMMARY: Pursuant to the authority contained in 31 U.S.C. 5318A, the Secretary of the Treasury, through his delegate, the Director of the Financial Crimes Enforcement Network, finds that reasonable grounds exist for concluding that Banco Delta Asia SARL (Banco Delta Asia) is a financial institution of primary money laundering concern.

DATES: The finding made in this notice is effective as of September 20, 2005.

FOR FURTHER INFORMATION CONTACT:

Regulatory Policy and Programs Division, the Financial Crimes Enforcement Network, (800) 949-2732.

SUPPLEMENTARY INFORMATION:**I. Background***A. Statutory Provisions*

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107-56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR part 103.

Section 311 of the USA PATRIOT Act (“section 311”) added section 5318A to the BSA, granting the Secretary of the Treasury (the “Secretary”) the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transactions, or type of account is of “primary money laundering concern,” to require domestic financial institutions and financial agencies to take certain “special measures” against the primary money laundering concern. Section 311 identifies factors for the Secretary to consider and Federal agencies to consult before the Secretary may conclude that a jurisdiction, institution, class of transaction, or type of account is of primary money laundering concern. The statute also provides similar procedures, *i.e.*, factors and consultation requirements, for

selecting the specific special measures to be imposed against the primary money laundering concern. For purposes of the finding contained in this notice, the Secretary has delegated his authority under section 311 to the Director of the Financial Crimes Enforcement Network.¹

Taken as a whole, section 311 provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. These options give the Secretary the authority to bring additional pressure on those jurisdictions and institutions that pose money laundering threats. Through the imposition of various special measures, the Secretary can gain more information about the jurisdictions, institutions, transactions, or accounts of concern; can more effectively monitor the respective jurisdictions, institutions, transactions, or accounts; or can protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

Before making a finding that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General. The Secretary is also required by section 311 to consider “such information as the Secretary determines to be relevant, including the following potentially relevant factors”:

- The extent to which such financial institution is used to facilitate or promote money laundering in or through the jurisdiction;
- The extent to which such financial institution is used for legitimate business purposes in the jurisdiction; and
- The extent to which the finding that the institution is of primary money laundering concern is sufficient to ensure, with respect to transactions involving the institution operating in the jurisdiction, that the purposes of the BSA continue to be fulfilled, and to guard against international money laundering and other financial crimes.

If the Secretary determines that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Secretary must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of

special measures that can be imposed individually, jointly, in any combination, and in any sequence.² The Secretary’s imposition of special measures requires additional consultations to be made and factors to be considered. The statute requires the Secretary to consult with appropriate federal agencies and other interested parties³ and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measures would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular institution; and
- The effect of the action on the United States national security and foreign policy.⁴

B. Banco Delta Asia

Banco Delta Asia, located and licensed in the Macau Special Administrative Region, China, is the commercial banking arm of its parent company, Delta Asia Group (Holdings)

² Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)-(5). For a complete discussion of the range of possible countermeasures, see 68 FR 18917 (April 17, 2003) (proposing special measures against Nauru).

³ Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the National Credit Union Administration (NCUA), and, in the sole discretion of the Secretary, “such other agencies and interested parties as the Secretary may find to be appropriate.” The consultation process must also include the Attorney General, if the Secretary is considering prohibiting or imposing conditions on domestic financial institutions opening or maintaining correspondent account relationships with the designated entity.

⁴ Classified information used in support of a section 311 finding and measure(s) may be submitted by Treasury to a reviewing court *ex parte* and *in camera*. See section 376 of the Intelligence Authorization Act for fiscal year 2004, Pub. L. 108-177 (amending 31 U.S.C. 5318A by adding new paragraph (f)).

¹ Therefore, references to the authority and findings of the Secretary in this document apply equally to the Director of the Financial Crimes Enforcement Network.

Ltd. (Delta Asia Group).⁵ In addition to commercial banking, Delta Asia Group engages in investment banking and insurance activities. Banco Delta Asia was originally established in 1935 as Banco Hang Sang,⁶ and its name changed to Banco Delta Asia in December 1993. With approximately 340 employees and a total equity of approximately \$35 million at the close of 2003, Banco Delta Asia is the fourth smallest commercial bank in Macau. Banco Delta Asia operates eight branches in Macau (including a branch at a casino) and is served by a representative office in Japan. In addition, Banco Delta Asia maintains correspondent accounts in Europe, Asia, Australia, Canada, and the United States, and has two wholly owned subsidiaries: Delta Asia Credit Ltd., and Delta Asia Insurance Limited.⁷

C. Macau

Money laundering has been identified as a significant problem in the Macau Special Administrative Region, China.⁸ According to the International Narcotics Strategy Control Report (INCSR) published in March 2005 by the U.S. Department of State, Macau's lack of adequate controls and regulatory oversight of the banking and gaming industries (many of which are associated with organized criminal activity) has led to an environment that can be exploited by money launderers. Moreover, the March 2005 INCSR designates Macau as a "jurisdiction of primary concern."⁹ The International Monetary Fund (IMF) conducted a study in 2002 concluding that, despite its anti-money laundering legal framework, Macau was "materially non-compliant" in terms of monitoring and reporting of suspicious financial transactions.¹⁰ Of

⁵ The Bankers Almanac (2004). This finding of primary money laundering concern shall apply exclusively to Banco Delta Asia and its branches, offices, and subsidiaries, and not to Delta Asia Group (Holdings) Ltd., or any of its other subsidiaries.

⁶ Banco Delta Asia's historical name, Banco Hang Sang, is not to be confused with Hang Seng Bank, a Hong Kong bank, nor the Hang Seng Index, an index of certain shares traded on the Hong Kong Stock Exchange.

⁷ The Banker's Almanac (2004).

⁸ References in this rule to the money laundering risks in Macau are limited to that jurisdiction, and not applicable to the entire jurisdiction of China.

⁹ "Jurisdictions of primary concern" are jurisdictions that are identified as "major money laundering countries," that is, countries "whose financial institutions engage in currency transactions involving significant amounts of proceeds from international narcotics-trafficking." See, <http://www.state.gov/g/inl/rls/nrcpt/2005/vol2/html/42388.htm>.

¹⁰ See International Monetary Fund, Monetary and Exchange Affairs Department, *Macau SAR 2002* http://www.amcm.gov.mo/Press_Release/IMF/IMF_Macao_Review.pdf.

special concern is Macau's lack of cross-border currency reporting requirements. In 2003, Macau prepared money laundering legislation that sought to incorporate the Financial Action Task Force's revised Forty Recommendations on Money Laundering, and to establish a Financial Intelligence Unit. Such legislation has not been adopted and the Financial Intelligence Unit has not been established. As noted in a 2004 IMF study, significant vulnerabilities remain in Macau, although it has made progress in its anti-money laundering regime in the past several years, including the establishment of a Fraud Investigation Section to examine suspicious transactions reports filed by financial institutions.

Government agencies and front companies of the Democratic People's Republic of Korea (DPRK or North Korea) that are engaged in illicit activities use Macau as a base of operations for money laundering and other illegal activities. For example, banks in Macau have allowed these organizations to launder counterfeit currency and the proceeds from government-sponsored illegal drug transactions.

D. North Korea

The involvement of North Korean government agencies and front companies in a wide variety of illegal activities, including drug trafficking and counterfeiting of goods and currency, has been widely reported.¹¹ Earnings from criminal activity, by their clandestine nature, are difficult to quantify, but studies estimate that proceeds from these activities amount to roughly \$500 million annually.¹²

Customs and police officials of many countries have regularly apprehended North Korean diplomats or quasi-official representatives of state trading companies trying to smuggle narcotics. For example, in December 2004, Turkish officials arrested two North Korean diplomats in Turkey in possession of illegal drugs valued at \$7 million. Earlier that year, Egyptian authorities expelled two other North Korean diplomats who attempted to deliver a shipment of controlled substances valued at \$150,000 in Egypt.¹³ In fact, since 1990, North Korea

¹¹ Emergency Response and Research Institute: "North Korea Government Deeply Involved With Organized Crime?" June 30, 1998; BBC News: "What is a Superdollar?", June 20, 2004; Washington Post: "North Korea's Conduit for Crime", April 25, 1999; Pacific Forum CSIS: "End North Korea's Drug Trade", June 16, 2003.

¹² Congressional Research Service Report for Congress: "Drug Trafficking and North Korea: Issues for U.S. Policy", Updated March 4, 2005.

¹³ See INCSR 2005 [pg. 335].

has been positively linked to nearly 50 drug seizures in 20 different countries, a significant number of which involved the arrest or detention of North Korean diplomats or officials.¹⁴ Proceeds from narcotics trafficking may amount to between \$100 million and \$200 million annually.¹⁵

During the past three decades, there also have been many incidents and arrests involving North Korean officials for distributing supernotes. Since first detected, the United States has taken possession of more than \$45 million of these highly deceptive counterfeit notes.

Substantial evidence exists that North Korean governmental entities and officials launder the proceeds of narcotics trafficking, counterfeit activities, and other illegal activities through a network of front companies that use financial institutions in Macau for their operations.

II. Analysis of Factors

Based upon a review and analysis of relevant information, consultations with relevant Federal agencies and departments, and after consideration of the factors enumerated in section 311, the Secretary has determined that reasonable grounds exist for concluding that Banco Delta Asia is a financial institution of primary money laundering concern. A discussion of the section 311 factors relevant to this finding follows:

1. The Extent to Which Banco Delta Asia Has Been Used To Facilitate or Promote Money Laundering in or Through the Jurisdiction

The Secretary has determined, based upon a variety of sources, that Banco Delta Asia is used to facilitate or promote money laundering and other financial crimes. Banco Delta Asia has provided financial services for over 20 years to multiple North Korean government agencies and front companies that are engaged in illicit activities, and continues to develop these relationships. In fact, such account holders comprise a significant amount of Banco Delta Asia's business. Banco Delta Asia has tailored its services to the DPRK's demands. For example, sources show that the DPRK pays a fee to Banco Delta Asia for financial access to the banking system with little oversight or control. The bank also handles the bulk of the DPRK's precious metal sales, and helps North Korean agents conduct surreptitious, multi-million dollar cash deposits and

¹⁴ Congressional Research Service Report for Congress: "Drug Trafficking and North Korea: Issues for U.S. Policy," Updated March 4, 2005.

¹⁵ Id.

withdrawals. Banco Delta Asia's questionable relationship with the DPRK is further demonstrated by its maintenance of an uninterrupted banking relationship with one North Korean front company despite the fact that the head of the company was charged with attempting to deposit large sums of counterfeit currency into Banco Delta Asia and was expelled from Macau. Although this same person later returned to his previous leadership position at the front company, services provided by Banco Delta Asia were not discontinued.

Banco Delta Asia's special relationship with the DPRK has specifically facilitated the criminal activities of North Korean government agencies and front companies. For example, sources show that senior officials in Banco Delta Asia are working with DPRK officials to accept large deposits of cash, including counterfeit U.S. currency, and agreeing to place that currency into circulation. Additionally, it has been widely reported that one well-known North Korean front company that has been a client of Banco Delta Asia for over a decade has conducted numerous illegal activities, including distributing counterfeit currency and smuggling counterfeit tobacco products. In addition, the front company has also long been suspected of being involved in international drug trafficking.

Moreover, Banco Delta Asia facilitated several multi-million dollar wire

transfers connected with alleged criminal activity on behalf of another North Korean front company.

In addition to facilitating illicit activities of the DPRK, investigations have revealed that Banco Delta Asia serviced a multi-million dollar account on behalf of a known international drug trafficker.

2. The Extent to Which Banco Delta Asia Is Used for Legitimate Business Purposes in the Jurisdiction

It is difficult to determine the extent to which Banco Delta Asia is used for legitimate purposes. Most banking transactions within Macau are conducted by the jurisdiction's largest banks, while Banco Delta Asia ranks as one of the smallest in Macau. Although Banco Delta Asia likely engages in some legitimate activity, the Secretary believes that any legitimate use of Banco Delta Asia is significantly outweighed by its use to promote or facilitate money laundering and other financial crimes.

3. The Extent to Which Such Action Is Sufficient To Ensure, With Respect to Transactions Involving Banco Delta Asia, That the Purposes of the BSA Continue To Be Fulfilled, and To Guard Against International Money Laundering and Other Financial Crimes

As detailed above, the Secretary has reasonable grounds to conclude that Banco Delta Asia is being used to promote or facilitate international money laundering, and is therefore an

institution of primary money laundering concern. Currently, there are no protective measures that specifically target Banco Delta Asia. Thus, finding Banco Delta Asia to be a financial institution of primary money laundering concern, which would allow consideration by the Secretary of special measures to be imposed on the institution under section 311, is a necessary first step to prevent Banco Delta Asia from facilitating money laundering or other financial crime through the U.S. financial system. The finding of primary money laundering concern will bring criminal conduct occurring at or through Banco Delta Asia to the attention of the international financial community and, it is hoped, further limit the bank's ability to be used for money laundering or for other criminal purposes.

III. Finding

Based on the foregoing factors, the Secretary, acting through the Director of the Financial Crimes Enforcement Network, hereby finds that Banco Delta Asia is a financial institution of primary money laundering concern.

Dated: September 12, 2005.

William F. Baity,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 05-18660 Filed 9-19-05; 8:45 am]

BILLING CODE 4810-02-P