

From: Admin - Exchange
Sent: Friday, October 21, 2005 8:50 AM
To: 'regcomments@fincen.gov'
Subject: Public Submission

Please Do Not Reply This Email.

Public Comments on Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations--Imposition of Special Measure Against Banco Delta Asia SARL:=====

Title: Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations--Imposition of Special Measure Against Banco Delta Asia SARL FR Document
Number: 05-18657 Legacy Document ID:
RIN:
Publish Date: 09/20/2005 00:00:00
Submitter Info:

First Name: KIM
Last Name: YOUNG
Organization Name: UNIVERSITY OF LAVERNE, CA.

Comment Info: =====

General Comment:1. Appropriate Form and scope of the notice to correspondent account holders that would be required under the rule The notice is a one-time requirement and may be sent to the corresponding account customers by mail, fax or email. The notice may also included in the next regularly schedule transmittal sent to the corresponding accounts holders. There is neither requirement that the corresponding account holders must acknowledge this notice, or reply by way of a certification that they will follow the terms of the notice; nor there is requirement that the correspondent account holders are responsible to assure the implementation of the notice. Institutions should document their compliance with the requirements that it provides the due diligence notice to its correspondent account holders.

Large international banks typically act as correspondents for thousands of other banks around the world. This vulnerable indirect relationship means the correspondent bank provides services for individuals or entities for which it has neither verified the identities nor obtained first hand knowledge of the respondent's customers. This oversight means that the correspondent bank is even farther removed from knowing the identities or business activities of the sub-respondents. The effectiveness of the notice is questionable. Many banking institutions might limit compliance by sending notice and have no mechanism to ensure that the sanction is enforced.

2. The appropriate scope of the proposed requirement for a covered institution should take reasonable steps to identify any indirect use of one of its corresponding accounts by Banco Delta Asia.

The proposal broadly defines Banco Delta Asia. The phrase includes all branches, and subsidiaries of Banco Delta Asia operating in Macau or in any jurisdictions. These branches, offices, and subsidiaries consist of, but not limited to the eight major branches , the Amaral, Antonio, Barca, Campo, Ioa Hon, Lisboa, Outubro, and Tap Sac branches in Macau, the Airport Services Centre, Financial Service Centre, Macau Administrative Centre, The Bank Center, and the Tokyo Representative office. The Financial institution should make a reasonable effort to determine whether a customer is a branch, office or subsidiary of Banco Delta Asia. Since Banco Delta Asia is a subsidiary of The Delta Financial Group which operates other businesses such as Delta Asia Credit Ltd. Delta Asia Securities Ltd., Delta Asia Financial Futures, Delta Asia Insurance Ltd., Delta Asia Research Ltd., the inter-relationship of these businesses might facilitate Banco Delta Asia to channel money though other avenues. The US Financial institutions might have to extend the definition to include the diverse financial activities such as credit card transactions; investments in securities, commodities, futures, insurance. Reasonable steps to identify any indirect use of one of its corresponding accounts by

Banco Delta Asia include:

a. provide sufficient training to line staff, compliance officers, internal auditors,

and legal personnel to keep employees on the alert of the suspicious activities, to develop a better understanding of trade-based money laundering and its effects, and to review the correspondent and payable through accounts.

- b. designate individuals responsible for implementing and monitoring the day to day operations and internal control of the program;
- c. Establish and implement policies and procedures that can reasonably detect and cause the reporting of transactions. Examine documents concerning import/export transactions and complex, unusual patterns of transactions which have no economic or visible lawful purpose.
- d. Establish and implement internal controls reasonably designed to achieve compliance with the Bank Secrecy Act.
- e. Provide for independent testing for compliance to be conducted by member personnel or by qualified outside party;
- f. Financial institutions must identify, on the basis of official documents, and record the identity of their clients when establishing business relations or conducting transactions.

g. Develop a response plan for the situations where indirect usage is detected. To comply with the due diligence requirement, financial institutions should conduct a risk assessment arising from business activities with entities in non-cooperative countries and territories. Evaluating bank controls over high risk areas of their business such as foreign correspondent accounts. Risk focused examination procedures concentrate less on an institutions' technical compliance and more on ensuring that bank implement effective system to manage operational, legal and reputation risks as they pertain to BSA

3. The appropriate steps a covered financial institution should take once it identifies an indirect use of one of its corresponding accounts by Banco Delta Asia a. Cessation of relationship/Closure of account: Financial institutions usually undergo an investigating period prior to filing SAR reporting the questionable activity to assure that the information reported is appropriate and accurate. This process will often include review by financial investigators, management and attorneys prior to filing. Upon identifying an indirect use of one of its corresponding accounts by Banco Delta Asia, the financial institution should promptly terminate the corresponding account to warrant.

b. Develop an enhanced information sharing with the financial community. The exchange of information relating to money laundering is a critical elements of an effective anti-money laundering scheme.

From an international perspective, the notice ordered by the proposal might not have the cooperation of the laws protecting financial privacy in many other countries., exposing bankers to the impossible problem of having to comply with two inconsistent legal regime.

4. The impact of the proposed special measure upon legitimate transaction with Banco Delta Asia involving, in particular, U.S. persons and entities; foreign persons, entities and governments; multilateral organizations doing legitimate business with persons, entities, or the government of Macau, or operating in Macau. Reporting requirements impose costs on the financial sector, and government must be sensitive to these costs in enforcing the rule. Banking institutions has begun to file "defensive" SARs in an effort to avoid criticism of their judgment about whether some activity is illegal or suspicious. The defensive fillings might threaten to clutter the SARs data base with information that cannot be properly analyzed due to volume.

Impact on Macau: Macau government should develop the modern and secure techniques of money management, including increase use of checks, payment cards, direct deposit of salary checks, and book entries recordings of securities as a means to encourage the replacement of cash transfers. This also encourages Macau government to create a comprehensive framework to correct the deficiencies in the anti money laundering system. The impact on legitimate businesses can be alleviated by collaborating with the international financial institutions, such as World Bank, The International Monetary Fund, and the multinational Financial Action Task Force to facilitate the legitimate transactions. The orders implementing the special measures are not necessarily permanent. Treasure may rescind the special measure order if it is determined that circumstances supporting the designation as primary money laundering concern no longer exists.