ANTI-MONEY LAUNDERING/COUNTER FINANCING OF TERRORISM /COUNTER PROLIFERATION FINANCING IN FOCUS

Part Twenty-Four:

An In-depth Look at the Financial Action Task Force (FATF) Forty Recommendations- Recommendation 21: Tipping Off and Confidentiality

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Recommendation 21 of the Financial Action Task Force's (FATF) Forty Recommendations at its foundation examines the ability of financial institutions and designated non-financial businesses and professions (DNFBPs) to report suspicious activities to the Financial Intelligence Authority (FIA) without repercussions.

This recommendation requires DNFBPs, financial institutions, their directors, officers and employees to be protected from any criminal or civil liabilities, if they breach contract disclosure restrictions by filing suspicious transaction reports (STRs) with the Financial Intelligence Authority. This protection must be embedded in legislation.

Further, financial institutions and DNFBPs (referred to in the Money Laundering (Prevention) Act as "a person engaged in other business activity") should be prohibited by law from disclosing or tipping off the person who is the subject of the report to the FIA.

These two areas are covered under the Money Laundering (Prevention) Act, Cap. 12.20 (MLPA) and the Anti-Terrorism Act, Cap. 3.16 (ATA). Under the MLPA, section 37(2) states that "civil or criminal action may not be brought nor may any professional sanction be taken against any person or against directors or employees of a financial institution or a person engaged in other business activity who in good faith transmit information or submit reports to the Authority". Further, regulation 16 of the Money Laundering (Prevention) (Guidance Notes) Regulations states that "it is an offence for anyone who knows, suspects or has reasonable grounds to suspect that a disclosure has been made, or that the authorities are acting or are proposing to act in connection with an investigation into money laundering, to prejudice an investigation by so informing the person who is the subject of a suspicion, or any third party of the disclosure, action or proposed action. The punishment on summary conviction is a term of 5 years (not exceeding 10 years) or a fine of not less than $50,000 or both". Section 32(5) of the ATA states that "no civil or criminal proceedings shall lie against any person for making a disclosure or report, in good faith".

The confidentiality of STRs is important because if the subject of the STR is tipped off this can adversely affect the intelligence gathering and investigation processes, resulting in the person disposing of assets or fleeing. Additionally, confidentiality ensures the safety and security of the person who is filing the report.

During the mutual evaluation process, assessors from the Caribbean Financial Action Task Force will examine whether the legislation in Saint Lucia adequately covers tipping off and confidentiality. Further during the on-site visit scheduled for September 16-27, 2019, the assessors will seek to determine how effectively these laws are being implemented.

More detailed information on Recommendation 21 can be sourced from the CFATF website at https://www.cfatf-gafic.org.