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Financial Crimes Enforcement Network

FinCEN Advisory

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Transactions Involving Liechtenstein

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Banks and other financial institutions operating in the United States are advised to give enhanced scrutiny to all financial transactions originating in or routed to or through the Principality of Liechtenstein, or involving entities organized or domiciled, or persons maintaining accounts, in Liechtenstein. The need for such enhanced scrutiny is discussed in the remainder of this Advisory.

Liechtenstein is a small country bordered by Switzerland (with which it forms a customs and currency union) and Austria. The population of Liechtenstein is approximately 32,200.

Liechtenstein is home to a well-developed offshore financial center. The country has chartered 15 banks, three non-bank financial companies, and 16 public investment companies. Its 230 licensed fiduciary companies and 60 lawyers serve as nominees for, or manage, more than 75,000 entities, primarily corporations, anstalts, and trusts, most for non-residents of Liechtenstein.

The counter-money laundering regime embodied in the legal, supervisory, and regulatory systems of Liechtenstein suffers from serious systemic problems.

Some of the problems arise because of particular defects in Liechtenstein's existing legislation or supervisory and enforcement mechanisms.

- Banks in Liechtenstein are not required to know or verify the identity of bank customers introduced by Liechtenstein's lawyers, licensed trustee companies, or corporate agents. Although the latter groups of professionals are themselves subject to certain obligations of due diligence under Liechtenstein law, the oversight of these professionals has historically been weak. Furthermore, the failure of banks to possess meaningful identity information about many of their customers limits their ability to recognize or avoid money laundering transactions.

- Although Liechtenstein's present system for suspicious reporting is mandatory, it requires that a "strong suspicion of money laundering" must exist before any report can be made to their financial intelligence unit. This extraordinarily strict requirement, coupled with liability to the client for any report that turns out to be unjustified, ensures that suspicious reporting is rare.

- Liechtenstein's financial sector primarily serves residents and citizens of other countries, but Liechtenstein authorities can share information to assist in criminal investigations by officials of other countries only through a cumbersome judicial process. It has proven difficult in practice to obtain information even through the limited channel the law permits; some of the difficulty may reflect the fact that Liechtenstein devotes very limited resources to financial supervision or enforcement generally.

Other weaknesses in Liechtenstein's counter-money laundering programs result from the interaction of particular rules in a way that can vitiate formal anti-money laundering requirements.

- Liechtenstein remains committed to strict bank secrecy, outside of a limited suspicious transaction reporting and international cooperation regime.

- Liechtenstein corporations may issue full bearer shares.

- Liechtenstein banks may issue numbered accounts (about whose true ownership only a handful of bank officials know) even in those cases in which customers deal with a bank directly rather than through a licensed intermediary.

These weaknesses combine to create a system in which knowledge of transactions is compartmentalized and layered so that formal reporting requirements or potential liability for violation of the nation's law or supervisory regime may mean little in practice. In this context, it can be very difficult for compliance officials or criminal investigators to reconstruct the financial trail of non-resident transactions by investigators, except in the most obvious of situations.

These deficiencies, among others, have caused Liechtenstein to be identified by the Financial Action Task Force on Money Laundering (the "FATF") as non-cooperative "in the fight against money laundering." The FATF, created at the 1989 G-7 Economic Summit, is a 29 member international group that works to combat money laundering.

Liechtenstein has indicated an awareness of deficiencies in its counter-money laundering systems. It has created a special task force under the supervision of an Austrian prosecutor to investigate money laundering within the Principality. It has drafted legislative changes that, if enacted, could remedy many of the structural deficiencies described above, in response to a review of its counter-money laundering programs by the Council of Europe's counter-money laundering experts and by the FATF.

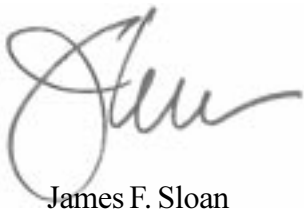
Nonetheless, the legal, supervisory, and regulatory systems of Liechtenstein at present create significant opportunities and tools for the laundering and protection of the proceeds of crime and allow criminals who make use of those systems to increase significantly their chances to evade effective investigation or punishment. Liechtenstein's commitment to bank secrecy and the compartmentalization of information and responsibility that those laws allow increase significantly the risk that transactions involving banks or other entities created and accounts maintained in Liechtenstein will be used for illegal purposes.

Thus, banks and other financial institutions operating in the United States should give enhanced scrutiny to any transaction originating in or routed to or through Liechtenstein, or involving entities organized or domiciled, or persons maintaining accounts, in Liechtenstein. A financial institution subject to the suspicious transaction reporting rules contained in 31 C.F.R. 103.18 (formerly 31 C.F.R. 103.21) (effective April 1, 1996), and in corresponding rules of the federal financial institution supervisory agencies, should carefully examine the available facts relating to any such transaction to determine if such transaction (of $5,000 or more, U.S. dollar equivalent) requires reporting in accordance with those rules. Institutions subject to the Bank Secrecy Act but not yet subject to specific suspicious transaction reporting rules should consider such a transaction with relation to their reporting obligations under other applicable law.

It should be emphasized that the issuance of this Advisory and the need for enhanced scrutiny does not mean that U.S. financial institutions should curtail legitimate business with Liechtenstein.

To dispel any doubt about application of the "safe harbor" to transactions within the ambit of this Advisory, the Treasury Department will consider any report relating to a transaction described in this Advisory to constitute a report of a suspicious transaction relevant to a possible violation of law or regulation, for purposes of the prohibitions against disclosure and the protection from liability for reporting of suspicious transactions contained in 31 U.S.C. 5318(g)(2) and (g)(3).

United States officials stand ready to provide appropriate technical assistance to Liechtenstein officials as they work to remedy the deficiencies in Liechtenstein's counter-money laundering systems that are the subject of this Advisory.



James F. Sloan
Director

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