COMPLEX CORPORATE STRUCTURES
AND CDD

Complexity in Corporate Structures

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November 2015
1) Complex Corporate Structures
2) Due Diligence of Complex Corporate Structures
3) Sources of Complexity
4) Facilitators of Complexity
5) Using Complex Corporate Structures to launder corrupt proceeds
Complex Corporate Structures – AML risks and features

- complexity obscures beneficial ownership and control
- misuse of corporations (legal persons) and trusts (legal arrangements)
- reliance on specialized intermediaries and professionals
- multiple multi-jurisdictional vehicles (Matryoshka)
- can sometimes be relatively easily created and dissolved
Is this a suspicious Complex Corporate Structure in a Money Laundering Scheme?

- **Organization “S”**
  - Holder of 100% bearer share capital
  - Lawyer

- **Country C**
  - Offshore Corporate Entities

- **Country D**
  - Administrator of Offshore Corporate Entities
  - Funds to be deposited or transited

- **Country B**

- **Country A** (Distinct Group of Persons)
  - Companies
  - Transfer of large amounts of money
  - Receipt of cash
  - Transfer of funds

- **Country E** (Anonymous)
  - Transfer of large amounts of money
Is this a suspicious Complex Corporate Structure in a Money Laundering Scheme?

- **Protector Committee:**
  - Family members
  - Professional advisers

- **Directors:**
  - Family member(s)
  - Professional advisers
  - Service provider representative(s)

- **TRUST**

- **Private Trust Company**
  - Act as **Trustee** for...
  - Contract for services

- **Trust A**
  - Protector “A”

- **Trust B**

- **Trust C**
  - Protector “B”

- **Investment Company**
  - Directors:
    - Family members
    - Investment professionals

- **Operating Company**
  - Directors:
    - Family members
    - Business managers
“Everything should be made as simple as possible, but not one bit simpler”
1. COMPLEX CORPORATE STRUCTURES
“Corporate vehicles play a complex, varied and essential role in modern economies.....it is important to bear in mind that of the millions of companies that exist, the vast majority engage in legitimate business, and only a small minority are misused....

In considering the misuse of corporate vehicles, it will be essential therefore to distinguish between those vehicles that pose a high risk and those that pose a low risk in relation to money laundering and terrorist financing.”
When is a complex corporate structure suspicious?
A Complex Legitimate Corporate Vehicle Structure

Protector Committee:
- Family members
- Professional advisers

Trust

Private Trust Company

Act as Trustee for...

Trust A

Protector “A”

Trust B

Trust C

Protector “B”

Investment Company

Directors:
- Family members
- Investment professionals

Operating Company

Directors:
- Family members
- Business managers
Complex Corporate Structure in a Money Laundering Scheme

Organization “S”

Lawyer

Importation of narcotics

Country B

Country E (Anonymous)

Importation of narcotics

Country A (Distinct Group of Persons)

Companies

Transfer of large amounts of money

Transfer of funds

Receipt of cash

Transfer of large amounts of money

Responsibility for drug shipments

Country D

Administrator of Offshore Corporate Entities

Transfer of large amounts of money

Country C

Offshore Corporate Entities

Holders

Trust Accounts

Funds to be deposited or transited

Laundering proceeds of narcotics importation operation

Holder of 100% bearer share capital

Laundering proceeds of narcotics importation operation

Transfer of large amounts of money

Funds to be deposited or transited

Receipt of cash

Transfer of funds
Note: “Chaining” corporate vehicles to obscure beneficial ownership

The Case of Former New York Senate Majority Leader Joseph L. Bruno (United States)

From 1993 to at least 2006, Joseph L. Bruno defrauded the State of New York by exploiting his position as New York senate majority leader for personal enrichment, using his ability to influence official action in return for personal benefit. He also filed faulty annual financial statements about his consulting work for a company called business consultants. This company was used to disguise Bruno’s identity. The whole scheme was effected through several corporate vehicles. One of these was Capital Business Consultants LLC, a company incorporated by Bruno, which never performed any real function other than to serve as an alternate name for the bookkeeping of his outside financial activities. The payments for fictional services actually were made out to Capital Business Consultants LLC and Business Consultants, Inc., a fictional subsidiary that never had been formally incorporated. Bruno further used Capital Business Consultants LLC to “purchase”—and thus conceal—his ownership interests in Microknowledge, Inc. (a company holding contracts with the State of New York), which he and Fassler had acquired in 2000.

2. DUE DILIGENCE OF COMPLEX CORPORATE STRUCTURES
40. A bank should also obtain all the information necessary to establish to its full satisfaction the identity of their customer and the identity of any person acting on behalf of the customer and of beneficial owners. While a bank is required to both identify its customers and verify their identities, the nature and extent of the information required for verification will depend on risk assessment, including the type of applicant (personal, corporate etc), and the expected size and use of the account. The specific requirements involved in ascertaining the identity of natural persons are usually prescribed in national legislation. Higher-risk customers will require the application of enhanced due diligence to verify customer identity. If the relationship is complex, or if the size of the account is significant, additional identification measures may be advisable, and these should be determined based on the level of overall risk.

41. When a bank is unable to complete CDD measures, it should not open the account, commence business relations or perform the transaction. However, there may be circumstances where it would be
Simplifying CDD – “ownership and control”
INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION

The FATF Recommendations

February 2012
CUSTOMER DUE DILIGENCE AND RECORD-KEEPING

10. Customer due diligence *

Financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names.

Financial institutions should be required to undertake customer due diligence (CDD) measures when:

(i) establishing business relations;

(ii) carrying out occasional transactions: (i) above the applicable designated threshold (USD/EUR 15,000); or (ii) that are wire transfers in the circumstances covered by the Interpretive Note to Recommendation 16;

(iii) there is a suspicion of money laundering or terrorist financing; or

(iv) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

The principle that financial institutions should conduct CDD should be set out in law. Each country may determine how it imposes specific CDD obligations, either through law or enforceable means.
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The principle that financial institutions should conduct CDD should be set out in law. Each country may determine how it imposes specific CDD obligations, either through law or enforceable means.

The CDD measures to be taken are as follows:

(a) Identifying the customer and verifying that customer’s identity using reliable, independent source documents, data or information.

(b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.

(c) Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship.

(d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution’s knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.
Simplifying CDD – “ownership and control”

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Appendix F: Money Laundering and Terrorist Financing “Red Flags”

The following are examples of potentially suspicious activities, or “red flags” for both money laundering and terrorist financing. Although these lists are not all-inclusive, they may help banks and examiners recognize possible money laundering and terrorist financing schemes. FinCEN issues advisories containing examples of “red flags” to inform and assist banks in reporting instances of suspected money laundering, terrorist financing, and fraud. In order to assist law enforcement in its efforts to target these activities, FinCEN requests that banks check the appropriate box(es) in the Suspicious Activity Information section and include certain key terms in the narrative section of the SAR. The advisories and guidance can be found on FinCEN Web site. Management’s primary focus should be on reporting suspicious activities, rather than on determining whether the transactions are in fact linked to money laundering, terrorist financing, or a particular crime.

The following examples are red flags that, when encountered, may warrant additional scrutiny. The mere presence of a red flag is not by itself evidence of criminal activity. Closer scrutiny should help to determine whether the activity is suspicious or one for which there does not appear to be a reasonable business or legal purpose.

Potentially Suspicious Activity That May Indicate Money Laundering

Customers Who Provide Insufficient or Suspicious Information
• Customer has established multiple accounts in various corporate or individual names that lack sufficient business purpose for the account complexities or appear to be an effort to hide the beneficial ownership from the bank.

• Transaction structure appears unnecessarily complex and designed to obscure the true nature of the transaction.
“Complexity” as a risk factor

H. RISK BASED APPROACH

14. The examples below are not mandatory elements of the FATF Standards, and are included for guidance only. The examples are not intended to be comprehensive, and although they are considered to be helpful indicators, they may not be relevant in all circumstances.

Higher risks

15. There are circumstances where the risk of money laundering or terrorist financing is higher, and enhanced CDD measures have to be taken. When assessing the money laundering and terrorist financing risks relating to types of customers, countries or geographic areas, and particular products, services, transactions or delivery channels, examples of potentially higher-risk situations (in addition to those set out in Recommendations 12 to 16) include the following:

(a) Customer risk factors:

- The business relationship is conducted in unusual circumstances (e.g. significant unexplained geographic distance between the financial institution and the customer).
- Non-resident customers.
- Legal persons or arrangements that are personal asset-holding vehicles.
- Companies that have nominee shareholders or shares in bearer form.
- Business that are cash-intensive.
- The ownership structure of the company appears unusual or excessively complex given the nature of the company’s business.
The ownership structure of the company appears unusual or excessively complex given the nature of the company’s business.
CDD Rule of thumb: Three Layer Complexity Test

Whenever more than three layers of legal persons and arrangements separate the end-user natural persons (substantive beneficial owners) from the immediate ownership or control of a bank account the potential client has a high burden of proof to demonstrate the legitimacy and necessity of such a complex organization before the bank will consider establishing a relationship.
Often the rationale is that the complex structure is the most economically advantageous and this view is supported by an expert opinion certifying the legal validity and fiscal appropriateness of the structure.

Compliance officer can request a copy of that opinion to be vetted and validated by their own in-house legal department and other experts.
Integrate typologies and examples of typical and atypical complex corporate structures into your in-house CDD training.
3. SOURCES OF COMPLEXITY: LEGAL PERSONS AND LEGAL ARRANGEMENTS
<table>
<thead>
<tr>
<th>Terms</th>
<th>Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal arrangements</td>
<td><em>Legal arrangements</em> refers to express trusts or other similar legal arrangements.  Examples of other similar arrangements (for AML/CFT purposes) include fiducie, treuhand and fideicomiso.</td>
</tr>
<tr>
<td>Legal persons</td>
<td><em>Legal persons</em> refers to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.</td>
</tr>
<tr>
<td>Money laundering offence</td>
<td>References (except in Recommendation 3) to a <em>money laundering offence</em> refer not only to the primary offence or offences, but also to ancillary offences.</td>
</tr>
</tbody>
</table>
Specific CDD measures required for legal persons and legal arrangements

10.8 For customers that are legal persons or legal arrangements, the financial institution should be required to understand the nature of the customer’s business and its ownership and control structure.
4. FACILITATORS OF COMPLEXITY: TRUST AND CORPORATE SERVICES PROVIDERS (TCSPs)
Trust and Corporate Service Providers impact complexity

**Designated Non Financial Business and Professions**

- Includes all those persons and entities that, on a professional basis, participate in the creation, administration and management of trusts and corporate vehicles.
Professional facilitators use corporations and trusts to drive complexity

“Complex methodology used by TCSPs on behalf of money launderers to obscure beneficial ownership of legal structures used in money laundering schemes.”
5. USING COMPLEX CORPORATE STRUCTURES TO LAUNDER PROCEEDS OF CORRUPTION
Synergism of Corruption and Money Laundering.

Intersection of Crime, Corruption, Money Laundering and Terrorist Financing

Remember that Terrorist Financing can be from legitimate sources not only from criminal acts.
Laundering the Proceeds of Corruption

e.g. most PEPs who are subject to disclosure requirements and ethical restrictions against kickbacks, self dealing and conflicts of interest often abuse complex corporate structures to hide their criminal assets.
Laundering the Proceeds of Corruption

PINOCHET CASE

• Augusto Pinochet former President of Chile established **complex corporate vehicles to hide his corrupt assets through** offshore shell corporations and a trust as nominal owners of US bank accounts and other investment vehicles - even after indictment in Spain and worldwide freezing orders and confiscation civil recovery orders.

• Was assisted by US bank **Bank’s KYC documentation only listed the corporations- not Pinochet as the owners of the accounts despite fact that Bank had set up the accounts and knew that Pinochet was the beneficial owner.** Bank was convicted.
THANK YOU!