

IMPACT OF CASH TRANSACTIONS LEGISLATION**QUESTIONS AND ANSWERS**

Question - Bradley Vann (Chairman):

Bill, there has been some experience with this in the US over the last couple of years and you made some reference to it in your paper. I would be interested to know what the effect was on jurisdictions proximate to the US. Would you be able to avoid the impact of the USA legislation by doing a similar transaction say in Canada or Mexico?

Response - Bill Coad:

I am not certain about Mexico, but certainly as far as Canada is concerned it has been suggested that the impact of this legislation and other action taken by the relevant US authority has increased the actual degree of money laundering in Canada to the point where Canada is now facing similar difficulties to the US.

Question - Bradley Vann:

What attitude are the courts likely to take in interpreting the legislation?

Response - Bill Coad:

Experience does show that when these Acts come down and they are litigated as inevitably they will be, the courts start reading them down and parliament is likely to immediately amend the Act to the extent that it overcomes anything inconsistent in any decision passed down by the court.

Question - Martin Kriewaldt (Fees Ruthning, Brisbane):

The first problem I have is that the definition of signatories is extraordinarily wide. It seems to me to cover the situation when my wife gives me two pieces of plastic to go down to the ATM and informs me of her ATM number and I go down and withdraw the money and whereupon I would fall within the definition of signatory. Whilst that particular transaction is not a reportable transaction, theoretically we should notify the bank of each signatory to that account. It also happens in relation to these types of operations that you can go through a number of the banks as well. Once you have someone who is capable of accessing your bank account, theoretically you should give notice.

The next problem that I have is in relation to the declaration which has to be filled in. The declarant has to swear that during the relevant period which is yet to be defined he knows that Brad Vann is always known as Brad Vann - now I may know Brad Vann reasonably well but I don't know what he gets up to after dark and I know that a number of my solicitors of the female persuasion go and get married, they use married names outside the office and unmarried names inside the office. I am very lucky to know that but I am not sure that the declarant is necessarily going to know what happens 24 hours a day.

The third rough area that I can see is that on a change of signatories to an account the notification has to be given and one of the things that you have to tell Bill about is the beneficiaries of the account if it is a trust account. For all the solicitors in the room you will know that the beneficiaries may be troubled as each having a separate trust account and however many clients have money in your account you give Bill "X" number of declarations which obviously creates a paper deluge. Alternatively you can say it is one account with a vast number of beneficiaries but by the time you get a printout of it and put them down in Bill's office, it is out of date. I am not quite sure how Bill is going to deal with these various problems in practice or whether he has a liberty of licence from the Attorney-General to allow him to have the rough edges knocked off this legislation.

Response - Bill Coad:

I think the first two you mentioned are rough edges. Probably you were the first one to think of them. The third one about the beneficiaries has been argued fairly vigorously by the Australian Bankers Association as part of a general submission of the procedures there and that was part of what will be swept up in this report. I think the Senate Committee made it fairly clear and I think it is fairly clear within the Attorney-General's department too that some of these edges will have to be knocked off by amendment as they go along.

Response - Bradley Vann:

One comment can be made about that second point you raise. I think the declaration is only for a verification purpose - I don't think they are actually talking about the night time behaviours of the individuals concerned, the behavioural characteristics anyway.

Comment - Tom Bostock:

If I could comment on Martin's first problem, it would be a breach of contract with the bank by giving away your pin number.

Comment - Bradley Vann:

One problem that comes out of the matter is that in some ways the legislation is tantamount to an admission that current procedures do not work - and it seems to be taking the opposite view that medical science takes where one looks at prevention rather than cure. But here we are working with the symptoms rather than the cause. So we are actually coming backwards from the traditional approach.

Comment - Bill Coad:

Well I think it is quite clear that there is amongst some law enforcement people a bit of despair about the current approaches and their degree of success in relation to drug traffickers for example and I think it is quite clear now that the law enforcement community is being asked to move in the direction of and pushed by Lionel Bowen to forfeiture of assets and proceeds of crime alike. What is being done is to say well if someone spends 5 years in Bombay and then they have got \$10,000,000 in Switzerland, we are going to get the \$10,000,000 even if you don't put it into an account.

Comment - Bradley Vann:

Ladies and gentlemen, we have had a very interesting session I am sure. I come away understanding a lot more in terms of the way the Act will operate and also some of the implications that will come out. We are speculating now of course as Bill said, the Act is expected to come fully into effect sometime early next year. And it will be interesting to see the developments that arise as a consequence of that and whether some of the fears raised by Tom will be realised. I would like you all to join together with me and thank both Bill and Tom for their interesting presentations.