



global witness

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Dear Under Secretary Mandelker,

Addressing the money laundering risks of lawyer client accounts

Global Witness has today published an analysis of the role of banks, lawyers and auditors in the alleged misappropriation of \$4.5 billion from 1Malaysia Development Berhad (1MDB), a company wholly owned by the government of Malaysia. Based on complaints filed by the Department of Justice it shows how more than \$500 million of money embezzled from 1MDB was transferred through the client accounts (Interest on Lawyer Accounts) of two US law firms.ⁱ

One of those at the centre of the fraud, Jho Low, is alleged to have moved approximately \$368 million of money misappropriated from 1MDB into the US through the law firm Shearman and Sterling's client account. Low apparently held funds in the client account for over a year, and used it to purchase luxury properties including L'Ermitage, the Park Laurel Condominium and the Time Warner Penthouse, as well as a Bombardier private jet. Low is also said to have used the account for gambling expenses and renting private yachts and jets, including transferring \$25 million to accounts at Caesars Palace and the Venetian Casino in Las Vegas and spending over \$4 million on private jet rental.

Low used another firm's client account, DLA Piper, to buy a \$200 million stake in the Park Lane Hotel in New York, according to the DoJ's evidence. Malaysian Prime Minister Najib Razak's stepson, Riza Aziz, also used a Shearman & Sterling client account to buy three properties in New York, Beverly Hills and London worth \$94 million using funds from 1MDB. The US criminal and civil actions are unresolved. The use of the client accounts in this way appears to have broken no anti-money laundering rules.

US lawyer client accounts have previously been used to shift corrupt funds into the US. Teodorin Obiang, son of the President of Equatorial Guinea, shifted millions of dollars of his country's money into the US through lawyers' client accounts and used these to pay his personal bills and expenses.ⁱⁱ

The absence of regulation requiring customer due diligence be completed on those using lawyer client accounts represents a major weakness in the US anti-money laundering (AML) regime – and the abuse of client accounts is an acute symptom of that weakness. The Financial Action Task Force highlighted these risks in its 2016 assessment of the US. It found that lawyers were not applying basic or enhanced due diligence processes, describing this as a “serious gap”.ⁱⁱⁱ

If the US is to have an effective, robust and comprehensive AML system it is vital that this serious gaps is addressed. While the reports of efforts by the Task Force of the Gatekeeper and the Profession of the American Bar Association (ABA) to introduce basic client due diligence requirements are welcome, such proposals are no substitute for federal regulation. Relying on changes to the ABA's Model Rule would leave responsibility for compliance and enforcement in the hands of state bar associations. The question of whether they would actually do this is an issue that is "unresolved" according to one member of the ABA Task Force that developed the new proposed Model Rule.^{iv} In addition, the Model Rule is only a model, with no requirement that state bar associations adopt its recommendations into their rules.

Lawyers' client accounts are issued by financial institutions on behalf of the law firms that use them. As such, Treasury can issue further instruction or regulation that would obligate banks to conduct due diligence on the use of these client accounts by firms when appropriate, and to seek greater information about the sources of the funds held in these accounts. Indeed, proposals to do this were once considered as a part of overall updates to customer due diligence for financial institutions, but were struck from the final rules issued in 2016. Such requirements are needed - otherwise this loophole will continue to allow criminals and the corrupt to avoid US banking AML requirements. Ultimately, Congress must introduce legislation that authorizes Treasury to enact broader AML due diligence requirements for lawyers.

We hope that in response to this analysis of the role of lawyers' client accounts in the 1MDB scandal, the Department of Treasury act on the recommendations above and will work with Congress to develop proposals that make sure these gaps are closed and AML checks are introduced.

Should you have any questions regarding our analysis or this letter, please contact Murray Worthy, Senior Campaigner – Banks and Corruption at mworthy@globalwitness.org or on +44 7725 257 419.

Sincerely

Mark Hays
Campaign Leader – Anti-Money Laundering
Global Witness

cc. Senate Committee on Finance, Chairman Orrin G. Hatch
Senate Committee on Finance, Ranking Member Ron Wyden
Senate Committee on Banking, Housing and Urban Affairs, Chairman Michael Crapo
Senate Committee on Banking, Housing and Urban Affairs, Ranking Member Sherrod Brown
House Financial Services Committee, Chairman Jeb Hensarling
House Financial Services Committee, Ranking Member Maxine Waters

ⁱ <https://www.justice.gov/opa/pr/united-states-seeks-recover-more-1-billion-obtained-corruption-involving-malaysian-sovereign>

<https://www.justice.gov/opa/pr/us-seeks-recover-approximately-540-million-obtained-corruption-involving-malaysian-sovereign>

ⁱⁱ <https://www.hsgac.senate.gov/download/report-psi-staff-report-keeping-foreign-corruption-out-of-the-united-states-four-case-histories>

ⁱⁱⁱ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf> p10, 120

^{iv} <https://www.jdsupra.com/legalnews/aml-due-diligence-standards-for-u-s-85565/>