After the report

Dr Alexander Ressos, TEP
Of Counsel, KGP Legal LLC
Attorney-at-Law (Switzerland and Germany), Solicitor (England & Wales and Hong Kong)

Filing an STR does not end the firm's obligations or its exposure. Four questions arise.

The first is whether to continue the relationship. Singapore has no consent regime of the United Kingdom type under which the reporting firm must await the authorities' permission before completing a transaction. The CDSA provides a defence to a person who makes a disclosure before doing an act that would otherwise be a laundering offence and then does that act with the consent of an authorised officer. The same defence covers a person who makes the disclosure on their own initiative as soon as reasonably practicable after doing the act.[1] In practice STRO does not give consent letters as a matter of routine, so a firm that wishes to execute a suspicious transaction after reporting takes the risk that the defence will not be available. The safer course for a transaction that has not yet been executed is to decline it. For a relationship, the firm should decide whether to exit. If it does, it must work out how to return the customer's assets without itself completing a laundering step, a problem that Chapter III discussed in the travel-rule context. Returning assets to the source they came from is usually defensible. Transferring them to a new destination of the customer's choosing after an STR is not.

The second question is tipping-off. Section 57 of the CDSA makes it an offence for a person who knows or has reasonable grounds to suspect that a disclosure has been made, or that an investigation is under way or imminent, to disclose to any other person information likely to prejudice the investigation.[2] The offence catches the obvious case of telling the customer that a report was filed. It also catches the less obvious cases. A relationship manager who explains a declined withdrawal by saying "compliance has concerns about your account" has tipped off. So has a group compliance function that circulates STR details to an affiliate in a jurisdiction where the information might leak, or an exit letter that gives a reason. The standard exit letter in Singapore gives no reason. The standard explanation for a hold refers to "our regulatory obligations" and nothing more.

The third question is protection. The CDSA provides that a disclosure made in good faith under s. 45 is not a breach of any restriction on disclosure imposed by law, contract or professional rule, and does not give rise to civil liability.[3] The protection covers the firm against the customer's claim for breach of confidence or breach of contract. It does not cover a disclosure made in bad faith or to anyone other than STRO. A firm that informs the customer's bank of its suspicion, outside the COSMIC framework, has no statutory protection and may be both tipping off and in breach of confidence.

The fourth question is the follow-up by the authorities. STRO disseminates reports to CAD, to MAS and to other agencies. CAD may follow with a production order under the Criminal Procedure Code

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2010 requiring documents, a request to freeze the account, or a seizure order under s. 35 of the Code.[4] A DPT firm receiving such an order must comply and must not inform the customer. Where the order concerns tokens in the firm's custody, the firm should confirm with CAD the technical means of compliance. Practice has settled on the firm freezing the customer's balance and awaiting instructions, with transfer to a police-controlled wallet occurring only on a court order or at CAD's written direction. Part N, Chapter III treats the recovery side.

Notes

1. CDSA 1992, ss. 51(2) and 54(2)–(3) (2020 Revised Edition), providing that a person does not commit the offence if the disclosure is made before the act and the act is done with the consent of an authorised officer, or if the disclosure is made on the person's own initiative as soon as reasonably practicable after the act.
2. CDSA 1992, s. 57 (2020 Revised Edition), tipping-off; the offence carries a fine of up to S$ 250,000 or imprisonment for up to 3 years or both for an individual.
3. CDSA 1992, s. 46 (2020 Revised Edition), protection of persons making disclosures.
4. Criminal Procedure Code 2010, s. 20 (production orders) and s. 35 (powers of police to seize property), as applied to accounts and DPT wallets held by financial institutions; see Part N, Chapter II on investigations.

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