



United States Department of the Treasury  
Financial Crimes Enforcement Network

# FinCEN Advisory

Subject:  
**Transactions  
Involving  
Ukraine**

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**Issue 29**

This Advisory is being issued to inform banks and other financial institutions operating in the United States of serious deficiencies in the counter-money laundering systems of Ukraine. The impact of such deficiencies on the scrutiny that should be given to certain transactions or banking relationships involving Ukraine, in light of the suspicious transaction reporting obligations of financial institutions operating in the United States, is discussed below.

The counter-money laundering regime embodied in the legal, supervisory, and regulatory systems of Ukraine suffers from certain serious, systemic problems as follows:

- Although banks in Ukraine are required to report large-scale and/or dubious transactions, they are not subject to penalty or sanction for failing to make such reports.
- Secrecy laws in the banking sector provide administrative authorities with limited access to customer account information. In the context of non-bank financial institutions, the relevant supervisory authorities have no ability to lift secrecy laws in connection with potential money laundering offenses.
- Non-bank financial institutions are under no obligation to identify beneficial owners when their clients appear to be acting on behalf of another party.
- Ukraine has devoted inadequate resources to investigating and prosecuting money laundering as evidenced by the lack of indictments, convictions and forfeitures by governmental authorities.
- Ukraine's acknowledged problems with pervasive public corruption interfere with its ability to apply and enforce anti-money laundering measures.

These deficiencies, among others, caused Ukraine to be identified in September 2001 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 31 member international group that works to combat money laundering.

Ukraine's new constitution, approved in 1996, guarantees the right to own property and to engage in business. Corruption, organized crime, smuggling and tax



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evasion are some of the significant problems confronting Ukraine as it continues its transition to a free market economy within the context of a democratic state. Strengthening Ukraine's laws and regulations applicable to money laundering to comply with generally acceptable international standards would facilitate this transition.

The Government of Ukraine is aware of the problems presented by money laundering and has taken several actions to strengthen its regime in this regard. In 2000, it revised its law on banks and banking activity to lend important anti-money laundering disciplines to the banking sector. Presidential decrees preclude banks from opening new anonymous accounts and executing transactions on existing anonymous accounts unless they can identify the owners. A 2001 law on financial services and the regulation of markets for financial services holds the promise of extending anti-money laundering measures to the non-bank financial services sector after it takes full effect over the next two years. Changes to Ukraine's criminal code that entered into force on September 1, 2001 extend the range of predicate offenses for money laundering to all serious crimes. The President of Ukraine issued a Decree in December 2001 mandating the establishment of the Financial Monitoring Department ("FMD") by January 2002. Although it is not fully operational, the FMD will serve as a financial intelligence unit ("FIU"). Ukraine is now in the process of drafting a law that will provide a comprehensive framework for the establishment and operation of the FIU.

In spite of these and other instances of progress, a fundamental and comprehensive anti-money laundering law has yet to be enacted. Legislation being considered by the Verkhovna Rada, the Ukrainian parliament, has been designed to remedy this situation. Nonetheless, Ukraine's legal, supervisory, and regulatory systems create significant opportunities and tools for money laundering and increase the possibility that transactions involving Ukraine entities and accounts will be used for illegal purposes.

Thus, banks and other financial institutions operating in the United States should carefully consider, when dealing with transactions originating in or routed to or through Ukraine, or involving entities organized or domiciled, or persons maintaining accounts, in Ukraine, how the lack of adequate counter-money laundering controls in Ukraine affects the possibility that those transactions are being used for illegal purposes. A financial institution subject to the suspicious transaction reporting rules contained within 31 C.F.R. Part 103, 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 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. All institutions are particularly advised to give enhanced

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scrutiny to transactions or relationships that do not involve established, and adequately identified and understood, commercial or investment enterprises, as well as to transactions involving the routing of transactions from Ukraine through third jurisdictions in ways that appear unrelated to commercial necessities.

It should be emphasized that the issuance of this Advisory, and the need for enhanced scrutiny for certain transactions or relationships, does not mean that U.S. financial institutions should curtail legitimate business with Ukraine.

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 will continue to provide appropriate technical assistance to Ukrainian officials as they work to remedy the deficiencies in Ukraine’s counter-money laundering systems that are the subject of this Advisory.



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Director

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