

Structuring

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Structuring, also known as **smurfing** in banking industry jargon, is the practice of executing financial transactions (such as the making of bank deposits) in a specific pattern calculated to avoid the creation of certain records and reports required by law, such as the United States's Bank Secrecy Act (BSA) and Internal Revenue Code section 6050I (relating to the requirement to file Form 8300).^[1]

Legal restrictions on structuring should not be confused with capital controls, which are statutory or regulatory limits on the money that one can take out of a nation, though they can have some of the same economic effects in some economies, as structuring controls effectively limit the flow of capital by magnitude and duration, and can apply equally to taking money out of a nation as well as putting money into its finance system.

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Background

Structuring includes the act of parceling what would otherwise be a large financial transaction into a series of smaller transactions to avoid scrutiny by regulators or law enforcement. Structuring often appears in federal indictments related to money laundering, fraud, and other financial crimes.

The term "smurfing" is derived from the image of the cartoon characters, the Smurfs, having a large group of many small entities. Miami-based lawyer Gregory Baldwin is said to have coined the term in the 1980s.^[2]

Typically each of the smaller transactions is executed in an amount below some statutory limit that normally does not require a financial institution to file a report with a government agency. Criminal enterprises often employ several agents (smurfs) to make the transaction.

Other uses

The term is also applied to activity associated with controlled substances such as pseudoephedrine^[3] In this context the agent will make purchases of small, legal amounts from several drug and grocery stores, with the intent to aggregate the lot for use in the illegal production of methamphetamine.^[4]

United States

In the United States, the Bank Secrecy Act requires the filing of a currency transaction report (CTR) for transactions of more than \$10,000 in currency (US or foreign). Financial institutions suspecting deposit structuring with intent to avoid the law are required to file a suspicious activity report.

Title 31 of the United States Code, section 5324, provides (in part):

No person shall, for the purpose of evading the reporting requirements of section 5313 (a) or 5325 or any regulation prescribed under any such section, the reporting or record keeping requirements imposed by any order issued under section 5326, or the record keeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508— [...] (3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

Section 5324 further provides that a violation of this provision may be punished by a fine or up to five years in prison, or both.^[5]

Canada

Canada's legislation on money laundering have been revised recently [1] (http://laws.justice.gc.ca/eng/SOR-2002-412/page-1.html#anchorbo-ga:s_2-gb:s_2) .

The CA\$10,000 rule remains.

Minimum Value of Currency or Monetary Instruments

2. (1) For the purposes of reporting the importation or exportation of currency or monetary instruments of a certain value under subsection 12(1) of the Act, the prescribed amount is \$10,000.

(2) The prescribed amount is in Canadian dollars or its equivalent in a foreign currency, based on

(a) the official conversion rate of the Bank of Canada as published in the Bank of Canada's Daily Memorandum of Exchange Rates that is in effect at the time of importation or exportation; or

(b) if no official conversion rate is set out in that publication for that currency, the conversion rate that the person or entity would use for that currency in the normal course of business at the time of the importation or exportation.

Regulatory Table

Capital controls generally regulate how much money can leave a country at any given time. Whereas anti-structuring regulations are more concerned with limiting the size of domestic transactions for individuals and somewhat limiting the outbound foreign currency transfers of firms or company entities.

Exceptions & clarifications

- Fiji has its own anti-smurfing laws, but they should not be confused with Fiji's capital controls. Fiji has limited outbound withdrawals in hard currency (AUD, NZD, USD) for at least 20 years.
- The Cook Islands has "Home Rule" with respect to banking. Cook Islands automated teller machines often fail to fully disclose the fact that the Cooks are not part of the New Zealand banking system. There are structuring regulations in the Cook Islands, but they are not the same as NZ.

Jurisdiction	Single Transaction	Notes
Australia	A\$10,000	Although there are no weekly or monthly limits, any parceling to evade the rules is a criminal offence. ^[6]
Brazil	<i>varies</i>	Depends on transaction type. ^[7]
Canada	CA\$10,000	All transactions totaling CA\$10,000 within a 24 hour period are subject to reporting. Certain businesses may qualify for Alternative to Large Cash Transaction (ALCT) reporting. ^[8]
Fiji	FJ\$1,100	Individuals are subject to FJ\$7,700 in a given week. Businesses engaged as investor tourism operators have no limit.
France	€3,000	
Germany	€15,000	
Guyana	USD10,000	
Ireland	€10,000	
India	₹ 50,000	
Italy	€12,500	[9]
Lithuania	LTL10,000	
Netherlands	€15,000	[10]
New Zealand	NZ\$10,000	Not applicable to the Cook Islands
Philippines	PHP500,000	
Portugal	€10,000	
Romania	€10,000	
Spain	€3,000	
Sweden	€10,000	[11]
Thailand	US\$58,000	[12]
Turkey	US\$50,000	
United States	US\$10,000	

See also

- Money laundering
- Structured finance

References

- [^] Internal Revenue Service (2006-06-01). "Part IV Examining Process; Chapter 26 Bank Secrecy Act; Section 13 Structuring" (<http://www.irs.gov/irm/part4/ch25s17.html>) . *Internal Revenue Manual* (<http://www.irs.gov/irm/index.html>) . Washington, D.C.: US Treasury Department. OCLC 37305546 (<http://www.worldcat.org/oclc/37305546>) . <http://www.irs.gov/irm/part4/ch25s17.html>. Retrieved 5/8/2012 1:37 PM

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2. ^ Gross, Samantha; Barrett, Devlin (11 March 2008). "Spitzer Tripped Up on Laws He Enforced" (<http://www.foxnews.com/wires/2008Mar11/0,4670,SpitzerTheMoneyTrail,00.html>) . *Fox News*. <http://www.foxnews.com/wires/2008Mar11/0,4670,SpitzerTheMoneyTrail,00.html>. Retrieved 2008-03-14.
 3. ^ http://www.justice.gov/dea/concern/18862/ndic_2009.pdf page 16
 4. ^ http://www.justice.gov/dea/concern/18862/ndic_2009.pdf page 16
 5. ^ 31 U.S.C. § 5324(d)(1) ([http://www.law.cornell.edu/uscode/31/5324\(d\)\(1\).html](http://www.law.cornell.edu/uscode/31/5324(d)(1).html)) .
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External links

- Financial Crimes Enforcement Network ruling on structuring (<http://www.fincen.gov/fincenruling2005-6.pdf>)

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