ANTI-MONEY LAUNDERING

United Kingdom

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Anti-Money Laundering

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into anti-money laundering laws and regulations, including overview of domestic laws, regulations and investigatory powers; criminal enforcement, including extraterritorial reach of applicable laws; compliance, including due diligence, high-risk categories of customers, business partners and transactions, record-keeping and reporting requirements, and the role of privacy laws; civil claims, including procedures, damages and other remedies; international anti-money laundering efforts; and recent trends.

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DOMESTIC LEGISLATION

Domestic law

Identify your jurisdiction's money laundering and anti-money laundering (AML) laws and regulations. Describe the main elements of these laws.

The principal laws governing money laundering in the United Kingdom are the Proceeds of Crime Act 2002 (POCA) and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations).

POCA

Substantive money laundering offences

At the heart of the money laundering offences is the concept of criminal property. Criminal property (effectively the proceeds of crime) is property that constitutes a person's benefit from criminal conduct or represents such a benefit, in whole or in part and whether directly or indirectly, and that the offender knows or suspects that it constitutes such a benefit (section 340(3) of POCA). Criminal conduct is conduct that constitutes an offence in any part of the UK or would constitute an offence in any part of the UK if it occurred there (section 340(2) of POCA).

POCA creates three primary money laundering offences criminalising involvement with criminal property (the primary offences):

- concealing, disguising, converting, transferring or removing criminal property from England and Wales or from Scotland or Northern Ireland (section 327);
- entering into or becoming concerned in an arrangement, knowing or suspecting that it facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person (section 328); and
- acquiring, using or possessing criminal property (section 329).

It is a defence to a primary money laundering offence if: (1) an 'authorised disclosure' (known as a suspicious activity report (SAR)) is made to the National Crime Agency (NCA), requesting consent to undertake the transaction or activity; and (2) appropriate consent is given or deemed given before any act is done. Such a SAR is also known as a 'Defence Against Money Laundering SAR' (DAML SAR).

There is also an adequate consideration defence to section 329 of POCA.

In addition to the primary offences, POCA creates a number of secondary offences that may be committed by those inside and outside of the regulated sector.

Additional obligations for the regulated sector

Firms and individuals in the regulated sector act as financial gatekeepers and have additional obligations. This will include financial institutions, independent legal professionals, estate agents and letting agents and persons conducting other specified activities.

Those in the regulated sector have an obligation to report suspicions or knowledge (subjective or objective) of money laundering under criminal penalty. Under section 330 of POCA, any person in the regulated sector can commit an offence of failing to make a required disclosure to a nominated officer or to the UK's Financial Intelligence Unit (the

NCA) if:

- they know or suspect, or have reasonable grounds for knowing or suspecting, that another person is engaged in money laundering;
- the information on which the knowledge or suspicion is based (or which gives rise to reasonable grounds for such) came to them in the course of a business in the regulated sector; and
- they are able to identify the other person or the whereabouts of any of the laundered property, or they believe or it is reasonable to expect them to believe that the information will or may assist in identifying that other person or the whereabouts of any of the laundered property.

The disclosure, made via a SAR, must be made as soon as practicable after the information or grounds for belief came to them. No offence is committed if there is a reasonable excuse for not making the disclosure, or the information came to a legal adviser or relevant professional adviser in privileged circumstances.

Under section 331 of POCA, a nominated officer, usually the money laundering reporting officer, commits an offence if they fail to inform the NCA of disclosures received under section 330 of POCA, where they know or suspect, or have reasonable grounds to know or suspect, that another person is engaged in money laundering.

Section 332 of POCA creates an additional 'failure to disclose' offence for nominated officers of businesses operating outside the regulated sector; however, the offence only applies if a nominated officer has actually been appointed. Liability only attaches to a nominated officer and not to other employees. The offence is not committed unless the nominated officer has actual knowledge or suspicion of money laundering.

It is a 'tipping off' offence under POCA either to disclose that a SAR has been made, or to disclose the existence of a money laundering investigation (whether such investigation is being contemplated or being carried out), in a manner that is likely to prejudice any investigation arising from the SAR (section 333A of POCA). This offence applies to the regulated sector only and there are some limited carve-outs. It is also an offence (inside or outside the regulated sector) to make a disclosure that is likely to prejudice the investigation, or to falsify, conceal, destroy or otherwise dispose of documents relevant to the investigation or cause or permit another person to do so, knowing or suspecting that an investigation is under way or planned (section 342 of POCA). It is a defence to show that they did not know or suspect that the disclosure was likely to prejudice the investigation.

The primary money laundering offences and the offences under sections 330 and 333A of POCA can be committed by individuals and corporate entities.

The Regulations

The Regulations implemented the Fourth EU Money Laundering Directive and were amended in January 2020 to implement the Fifth EU Money Laundering Directive. The Sixth EU Money Laundering Directive does not apply to the UK since the UK decided to opt out of implementing the Directive in September 2017 and has since exited the EU.

The Regulations apply to the conduct of 'relevant persons' (ie, the regulated sector). They require regulated businesses to put measures in place to ensure thorough risk assessments of their business; to apply 'know your customer' checks on clients and to monitor AML vulnerabilities; to maintain policies and controls; and to put in place procedures to mitigate and manage risk. The policies and procedures must be risk-based and proportionate to the size and nature of the business. The approach must be approved by senior management and subject to proper record-keeping practices.

For details on customer due diligence (CDD) obligations, see the response to question 3.5.1 below.

There are various criminal offences under the Regulations:

- Failing to meet the obligations under the Regulations is a criminal offence under Regulation 86 and can be committed by an individual or a corporate.
- Under Regulation 87, it is an offence to make a disclosure that is likely to prejudice the investigation, or to falsify, conceal, destroy or otherwise dispose of relevant documents or cause or permit another person to do so, knowing or suspecting that an investigation into a potential breach of any of the Regulations is underway or about to be conducted.
- It is also an offence to knowingly or recklessly provide information that is false or misleading in a material particular in purported compliance with any requirement under the Regulations (Regulation 88).

The Regulations also put in place the supervisory framework and require the production of a national risk assessment.

Terrorism Act 2000

The Terrorism Act 2000 (TACT) contains offences of funding terrorism, using or possessing money or other property for terrorism, or entering into any arrangement that makes money or other property available for the purposes of terrorism (sections 15 to 17 of TACT). It is also an offence to enter into or become concerned in an arrangement that facilitates the retention or control of terrorist property by or on behalf of another person (section 18 of TACT).

TACT defines 'terrorist property' as money or other property likely to be used for the purposes of terrorism, the proceeds of terrorism or proceeds of acts carried out for the purposes of terrorism. 'Terrorist property', therefore, has a forward-looking element unlike the concept of 'criminal property', which is concerned solely with historical matters. TACT also contains offences of failing to disclose knowledge or suspicion, or reasonable grounds for knowledge or suspicion that another person has committed or attempted to commit an offence under sections 15 to 18 of TACT (section 21A of TACT for the regulated sector). Section 19 of TACT sets out a similar offence that applies to any person who receives information in the course of their trade, profession or business or in the course of their employment. The section 19 offence requires belief or suspicion, not actual knowledge.

Similar to POCA, there is a tipping off offence where a disclosure under TACT has been made and a consent regime that, in general terms, is similar to the POCA regime.

Sanctions and Anti-Money Laundering Act 2018

The Sanctions and Anti-Money Laundering Act 2018 (SAMLA) is designed to smooth the transition of the UK's departure from the European Union and to ensure that it maintains its existing regulations and keeps pace with the international standards and recommendations made by the Financial Action Task Force (FATF). SAMLA provides the main legal basis for the UK to impose, update and lift sanctions.

Law stated - 28 March 2022

Investigatory powers

Describe any specific powers to identify proceeds of crime or to require an explanation as to the source of funds.

POCA provides a number of investigatory and enforcement tools to enable the detection, prevention and disruption of economic crime. These include the following.

Production orders

A production order (PO) allows law enforcement to obtain materials relating to a known person or business (eg, bank statements). It can be served on an individual or a corporate and can be extended to the grant of entry to obtain access to material.

Disclosure orders

A disclosure order (DO) is an order requiring a person to answer questions, provide information or to produce documents, where they are considered to have information relevant to an investigation. Failure to comply with a DO without reasonable excuse is an offence. Knowingly or recklessly making a false or misleading statement in response to a DO is also an offence.

Account monitoring orders

Unlike other investigative orders, which cover historical information, an account monitoring order allows an investigator to monitor the activity of a specified bank account for up to 90 days.

Unexplained wealth orders

An unexplained wealth order (UWO) is an investigative tool requiring a person holding certain property to provide relevant information, including details of their interest in the property and how they acquired and paid for it. The application is made by law enforcement to the High Court and can be made with or without notice.

A UWO can be made in respect of any type of property located anywhere in the world that is held by a politically exposed person (PEP) from outside the UK or European Economic Area, or a person reasonably suspected of past or present involvement in serious crime or of being connected to such a person. There is no requirement for suspicion in relation to criminality regarding a PEP. The property that is subject to the UWO must have a value greater than £50,000.

Failure to comply with a UWO results in the property in question being presumed to be recoverable in any subsequent civil recovery proceedings (the UK's non-conviction-based asset forfeiture regime). Recoverable property is property obtained through unlawful conduct (section 304 of POCA).

Account freezing orders and account forfeiture orders

An account freezing order (AFrO) may be made where there are reasonable grounds to suspect that money held in a bank account (minimum £1,000) is recoverable property or intended for use in unlawful conduct. An AFrO may last up to two years.

Where an AFrO is in place, the court may make an account forfeiture order (AFO) or an account forfeiture notice (AFN) in respect of the frozen account. An AFO allows all or part of the funds in the account frozen under the AFrO to be forfeited to law enforcement. There is a higher bar for forfeiture. An AFrO can be obtained on the basis of suspicion. To grant an AFO, the court must be satisfied, on the balance of probabilities, that the money or part of it represents the proceeds of crime, or is intended by any person for use in unlawful conduct. An AFN involves a more administrative process that can be used by law enforcement.

Restraint orders

A restraint order prevents a specified person, who is under criminal investigation or subject to criminal proceedings, from dealing with property held by them, where there are reasonable grounds to suspect that they have benefited from criminal conduct. The restraint order is designed to preserve property for confiscation proceedings.

Law stated - 28 March 2022

MONEY LAUNDERING

Criminal enforcement

Which government entities enforce your jurisdiction's money laundering laws?

Money laundering offences are principally investigated by the police, the National Crime Agency (NCA) or HM Revenue & Customs (HMRC). The Crown Prosecution Service usually conducts criminal proceedings. The Serious Fraud Office (SFO) investigates and prosecutes matters involving serious or complex fraud or corruption, which can involve money laundering. Where the allegations are linked to regulated entities or activities, the matter may be investigated or prosecuted by the Financial Conduct Authority (FCA).

The FCA, HMRC, the Gambling Commission and 22 other professional bodies act as supervisory authorities under the Regulations, and can take civil or criminal action in relation to breaches of the Regulations or their own regulatory rules. Supervisory authorities may also take other regulatory action in relation to failures in money laundering systems and controls.

Law stated - 28 March 2022

Defendants

Can both natural and legal persons be prosecuted for money laundering?

Under UK law, criminal liability attaches to both natural and legal persons. Therefore, a corporate entity may be criminally liable for committing a money laundering offence.

Corporate criminal liability for a substantive money laundering offence must be established under the 'identification principle'. This requires person(s) representing the 'controlling mind and will' of the company to be identified, who are of sufficient seniority and who have sufficient control such that their acts are attributable to the company itself. In practice, this is limited to a small number of directors and senior managers.

The effectiveness of the identification principle as the basis for corporate criminal responsibility has been a cause for debate. The Law Commission undertook a public consultation on the scope of corporate criminal liability and a report on potential areas of reform is expected to be published in 'early 2022'.

The criminal offences under the Regulations also apply to corporates. Under the Regulations, a corporate commits an offence if it contravenes a relevant requirement in relation to AML policies and procedures. This is a strict liability offence and the directing mind principles are not applicable.

Law stated - 28 March 2022

The offence of money laundering

What constitutes money laundering?

The primary money laundering offences are set out at sections 327 to 329 of POCA. In each case, it is necessary to show that the person knows or suspects that the property in question is criminal property (ie, the proceeds of crime).

The threshold for suspicion in this context is low. Suspicion for these purposes is defined in the decision of the Court of Appeal in R v Da Silva (2006) (EWCA Crim 1654), where the court held that a person 'must think there is a possibility, which is more than fanciful, that the relevant facts exist'. A vague feeling of unease would not suffice; however, the statute does not require the suspicion to be 'clear' or 'firmly grounded and targeted on specific facts', or based upon 'reasonable grounds'.

Law stated - 28 March 2022

Qualifying assets and transactions

Is there any limitation on the types of assets or transactions that can form the basis of a money laundering offence?

'Property' under POCA includes property of any kind wherever it is situated (section 340(9) of POCA).

However, under sections 327(2C), 328(5) and 329(2C) of POCA, a deposit-taking body, electronic money institution or payment institution does not commit an offence if it commits any of the acts forming the basis of the primary offences, so long as the act is done in the course of operating an account that it maintains, and the value of the property concerned is less than £250.

Law stated - 28 March 2022

Predicate offences

Generally, what constitute predicate offences?

Substantive money laundering offences

Money laundering offences under POCA are on an 'all crimes' basis. This means that the money laundering offences are not restricted to a particular type of predicate offence. Tax offences have always been predicate crimes for the purposes of the money laundering offences under POCA.

For the purposes of the primary money laundering offences, 'criminal conduct' means conduct that constitutes an offence in any part of the UK or would constitute an offence in any part of the UK if it had occurred there. It is also immaterial who carried out the criminal conduct, who benefited from it and whether the underlying criminal conduct occurred before or after the coming into force of POCA.

Currency exchange

The UK does not have currency exchange laws in place, though law enforcement has considered that methods used to violate other states' currency exchange laws to remit funds to the UK can involve the commission of ancillary offences under UK law.

Law stated - 28 March 2022

Defences

Are there any codified or common law defences to charges of money laundering?

It is a defence to the primary offences if an authorised disclosure is made to the NCA and appropriate consent has been given (before the act is done). It is also a defence if a person intended to make a disclosure but had a reasonable

excuse for not doing so. These disclosures are made via a SAR seeking the appropriate consent. They are sometimes called consent SARs or a 'defence against money laundering' SAR (DAML SAR).

A DAML SAR gives the NCA an opportunity to consent (or refuse consent) to the relevant transaction. If no response is given by the NCA within seven working days starting from the first working day after the DAML SAR is made, consent is deemed to have been given. If, however, within that seven working day period, consent is refused, a moratorium period of 31 calendar days begins (starting from the day on which consent is refused), after which consent is deemed to have been given (section 335 of POCA). The moratorium period can be extended by the Crown Court a number of times up to a maximum of 217 days, including the initial 31 days (section 336A of POCA). The moratorium period allows law enforcement time to take further investigative steps and/or seek to freeze or forfeit property.

It is also a defence to an offence under section 329 of POCA to acquire, use or possess the property for "adequate consideration". This defence is available, for example, where the criminal property has been acquired through receipt of monies in connection with the provision of services by a professional advisor (such as a solicitor or accountant). The limitations of this defence are set out at section 329(3) of POCA. The adequate consideration defence does not apply to the money laundering offences under sections 327 and 328 of POCA.

Law stated - 28 March 2022

Resolutions and sanctions

What is the range of outcomes in criminal money laundering cases?

The substantive money laundering offences under POCA are punishable with a maximum penalty of 14 years' imprisonment and/or an unlimited fine. The offences of failing to disclose, prejudicing an investigation and tipping off are offences triable either summarily or on indictment and are punishable with a maximum of five years' or two years' imprisonment respectively, or an unlimited fine, or both.

Offences under the Regulations are punishable with a maximum penalty of two years' imprisonment (for individuals) and/or an unlimited fine.

For a legal entity, the maximum penalty is an unlimited fine under POCA and the Regulations. Unlike an individual defendant, a corporate defendant can enter into a deferred prosecution agreement (DPA) in relation to the money laundering offences under POCA and the criminal offence under the Regulations of contravening a relevant requirement in relation to AML policies and procedures.

A DPA requires an admission of some wrongdoing but avoids a criminal conviction. A DPA usually contains conditions requiring the payment of a fine, disgorgement of any benefit from the wrongdoing and the payment of the prosecution costs. It can also require continued cooperation with an ongoing investigation and a period of monitoring of policies and procedures. A DPA is for a fixed period, agreed between the parties and must be approved by a judge. At the successful conclusion of a DPA, the criminal proceedings against the corporate defendant are concluded.

Whether to prosecute a money laundering offence is subject to the two-stage test applied to all criminal offences: (1) whether there is sufficient evidence to provide a realistic prospect of conviction; and (2) whether a prosecution is in the public interest.

The sentencing process may result in ancillary orders (eg, a confiscation order).

Law stated - 28 March 2022

Forfeiture

Describe any related asset freezing, forfeiture, disgorgement and victim compensation laws.

A number of procedures are available to deprive offenders of the proceeds of crime.

Confiscation orders

A confiscation order is an order depriving a convicted person of the benefit gained from their criminal conduct. The order is not directed at any specific property but is made for the recovery of a sum said to represent the value of the benefit from criminal conduct. When making a confiscation order, a period of imprisonment in default is set in the event of a failure to satisfy the order.

Compensation orders

A compensation order is an order made by the court requiring the payment of a sum of money to a victim for loss or damage suffered as a result of the criminal conduct.

Civil recovery orders

The UK has a non-conviction-based asset recovery regime, called the civil recovery regime. Civil recovery applies to the proceeds of 'unlawful conduct', defined in section 241 of POCA as conduct that is unlawful under UK criminal law or, where the conduct occurred outside the UK, is unlawful under the criminal law of that territory and, if it had occurred in the UK, would be unlawful under UK criminal law. Unlawful conduct also includes conduct that occurs outside the UK, constitutes or is connected with the commission of a gross human rights abuse or violation and, if it had occurred in the UK, would be an indictable offence.

Part 5 of POCA provides for the making of a civil recovery order (CRO) by the High Court for the recovery of property, which is or represents property obtained through unlawful conduct. The question of whether property has been obtained through unlawful conduct is decided on the balance of probabilities. A CRO does not require a criminal conviction or any criminal proceedings; it targets property not the person holding it. An enforcement authority may obtain a CRO against any person it thinks holds recoverable property.

Asset freezing and forfeiture

As noted above, POCA provides certain authorities with the power to freeze and forfeit monies held in bank and building society accounts and to forfeit cash in summary proceedings.

An account freezing order (AFrO) may be made where there are reasonable grounds to suspect that money (being a minimum of £1,000) held in a bank account is recoverable property or intended for use in unlawful conduct. An AFrO may last up to two years.

Where an AFrO is in place, the court may make an account forfeiture order (AFO) or an account forfeiture notice (AFN) in respect of the frozen account. An AFO allows all or part of the funds in the account frozen under the AFrO to be forfeited to law enforcement. An AFrO can be obtained on the basis of suspicion, but there is a higher bar for forfeiture. To grant an AFO, the court must be satisfied, on the balance of probabilities, that the money or part of it represents the proceeds of crime, or is intended by any person for use in unlawful conduct.

Disgorgement

Under the DPA regime, a corporate that enters into a DPA may be required to pay a disgorgement figure representing the profits from any wrongdoing.

Law stated - 28 March 2022

Limitation periods on money laundering prosecutions

What are the limitation periods governing money laundering prosecutions?

As is the general rule in UK criminal law, except in respect of summary only offences, there is no limitation period for the prosecution of offences, including money laundering offences. The money laundering offence must be committed after the commencement of POCA; however, the date of the predicate offending is immaterial.

Law stated - 28 March 2022

Extraterritorial reach of money laundering law

Do the money laundering laws applicable in your jurisdiction have extraterritorial reach?

The courts have held that the substantive money laundering offences under POCA have some extraterritorial application. A person who is not in the UK can be prosecuted for a money laundering offence in the UK where there is UK nexus; for example, where their conduct took place entirely outside the UK, in circumstances where a substantial element of the overall criminality took place in the UK and its harmful consequences were felt in the UK (see R v Rogers (2014) EWCA Crim 1680, paragraph 55).

Where the proceeds of foreign crimes are laundered in the UK, the essential question is whether the property is criminal property; namely property that is or represents, in whole or part and whether directly or indirectly, a person's benefit from criminal conduct, and the person knows or suspects that it constitutes or represents such a benefit. Laundering the proceeds of foreign crimes is an offence under POCA if the criminal conduct either constitutes an offence in the UK or would constitute an offence in any part of the UK, if it had occurred there. If the conduct constituting the foreign crime would not constitute an offence in the UK, it would not fall within the definition of criminal conduct and therefore no money laundering offence is committed in the UK.

The reporting obligations applicable to regulated entities attach to money laundering wherever it occurs (assuming the reporter is within the UK).

Law stated - 28 March 2022

AML REQUIREMENTS FOR COVERED INSTITUTIONS AND INDIVIDUALS

Enforcement and regulation

Which government entities enforce the AML regime and regulate covered institutions and persons in your jurisdiction? Do the AML rules provide for ongoing and periodic assessments of covered institutions and persons?

Businesses operating in the regulated sector are subject to the Regulations and are monitored by a supervisory authority. Each supervisory authority is responsible for monitoring and taking appropriate action to ensure compliance with the Regulations and must provide guidance to businesses in its sector.

The Financial Conduct Authority (FCA), HMRC, the Gambling Commission and 22 other professional bodies act as

supervisory authorities under the Proceeds of Crime Act 2002 (POCA) and the Regulations. Breaches of the Regulations or their own regulatory rules may be pursued civilly or criminally. Supervisory authorities may also take other regulatory action in relation to failures in money laundering systems and controls.

The Office for Professional Body Anti-Money Laundering Supervision was established in 2018 and is based within the FCA. Its objective is to improve the consistency of professional body AML supervision. It has the power to ensure that the professional bodies acting as supervisory authorities meet the standards required by the Regulations.

Law stated - 28 March 2022

Covered institutions and persons

Which institutions and persons must have AML measures in place?

Regulated sector businesses are required to implement extensive compliance programmes as set out in the Regulations. A business is a regulated business if it is involved in one of the activities listed in Part 1 of Schedule 9 of POCA and if it is a 'relevant person' under Regulation 8 of the Regulations.

The regulated sector includes:

- credit institutions;
- financial institutions;
- auditors, insolvency practitioners, external accountants and tax advisers;
- independent legal professionals;
- trust or company service providers;
- estate agents and letting agents;
- high-value dealers;
- casinos;
- art market participants;
- crypto-asset exchange providers; and
- custodian wallet providers.

Those in the regulated sector also have an obligation to report suspicions or knowledge (subjective or objective) of money laundering under criminal penalty.

Non-regulated businesses, although not under an obligation to implement AML measures, may nevertheless consider it prudent to put measures in place to mitigate AML risk. Non-regulated businesses can commit the substantive money laundering offences and the 'prejudicing an investigation' offence under POCA. Section 332 of POCA also creates an additional 'failure to disclose' offence for nominated officers of non-regulated businesses; however, the offence only applies if a nominated officer has actually been appointed. Liability only attaches to a nominated officer and not to other employees. The offence is not committed unless the nominated officer has actual knowledge or suspicion of money laundering.

Law stated - 28 March 2022

Compliance

Do the AML laws applicable in your jurisdiction require covered institutions and persons to implement AML compliance programmes? What are the required elements of such programmes?

Regulated sector businesses are required to implement extensive compliance programmes as set out in the Regulations.

The Regulations contain a large number of requirements. Failure to comply with such requirements can lead to penalty provisions. The requirements include, but are not limited to:

- carrying out a risk assessment that identifies and assesses the risk of money laundering and terrorist financing to its business;
- establishing and maintaining policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in the risk assessment; and
- the application of customer due diligence (CDD) measures on a risk-based approach.

The policies and procedures must be risk-based and proportionate to the size and nature of the business. The approach must be approved by senior management and subject to proper record-keeping practices.

Law stated - 28 March 2022

Breach of AML requirements

What constitutes breach of AML duties imposed by the law?

The law covers the substantive money laundering offences, regulated sector reporting obligations, tipping off and breaches of the requirements of the Regulations.

Law stated - 28 March 2022

Customer and business partner due diligence

Describe due diligence requirements in your jurisdiction’s AML regime.

Under the Regulations, a business in the regulated sector must carry out CDD in circumstances including the following:

- when establishing a business relationship (before it is established unless it would interrupt the normal conduct of business, and there is little risk of money laundering or terrorist financing);
- when carrying out an occasional transaction that amounts to a transfer of funds within the meaning of article 3.9 of the Funds Transfer Regulation exceeding €1,000 (before the transaction is carried out unless it would interrupt the normal conduct of business, and there is little risk of money laundering and terrorist financing);
- where money laundering or terrorist financing is suspected;
- where there are doubts about the veracity or adequacy of documents or information obtained for the purposes of identification or verification;
- at other appropriate times to existing customers on a risk-based approach;
- when the regulated person becomes aware that the circumstances of an existing customer relevant to its risk assessment for that customer has changed; and
- when the relevant person has any legal duty in the course of the calendar year to contact an existing customer to review information that is relevant to the business's risk assessment for that customer, and relates to the beneficial ownership of the customer.

The CDD measures must include identifying and verifying the customer (unless the customer is known and has been

verified) and assessing the purpose and intended nature of the business relationship or occasional transaction.

A risk-based approach should be taken to CDD. The Regulations contain provisions for applying enhanced customer due diligence (EDD) on higher-risk customers and simplified customer due diligence (SDD) on lower risk customers.

Where the customer is a corporate, CDD must include verification of certain details. Reasonable steps must also be taken to determine and verify the law to which the corporate is subject, the names of the directors on the Board or equivalent body, and the senior persons responsible for the operations of the body corporate (unless the customer is a business listed on a regulated market).

A 'beneficial owner' in relation to a body corporate that is not a listed company is any individual who exercises ultimate control over the management of the body corporate, or who ultimately owns or controls (directly or indirectly) more than 25 per cent of the shares or voting rights, or an individual who controls the body corporate (Regulation 5 of the Regulations). The Regulations include an obligation to take reasonable measures to understand the ownership and control structure where the customer is a legal person, trust, company, foundation or similar legal arrangement (Regulation 28(3A) of the Regulations).

Unless the customer is a business listed on a regulated market, where it is beneficially owned by another person, the beneficial owner must be identified and reasonable measures taken to verify the identity of the beneficial owner, including information that enables the regulated entity to understand the ownership and control of the beneficial owner if it is a legal person, trust, foundation or similar legal arrangement.

There is also an obligation to report to Companies House any discrepancy found in relation to beneficial ownership between information collected from Companies House during the CDD process and information that otherwise becomes available in the course of carrying out the duties under the Regulations (Regulation 30A(2)).

Credit and financial institutions are subject to additional CDD obligations in relation to certain transactions (Regulation 29).

Where a regulated business is unable to comply with the CDD requirements, the Regulations require that the business relationship must not be established, the transaction not be carried out or an existing business relationship must be terminated. The business must also consider whether it must file a SAR (Regulation 31).

Law stated - 28 March 2022

High-risk categories of customers, business partners and transactions

Do the AML rules applicable in your jurisdiction require that covered institutions and persons conduct risk-based analyses? Which high-risk categories are specified? What level of due diligence is expected in relation to customers assessed to be high risk?

Regulation 18 requires regulated sector businesses to carry out a written risk assessment and to identify and assess the risk of money laundering or terrorist financing to which its business is subject. In carrying out the risk assessment, the business must take into account:

- guidance and other information issued by the relevant regulator; and
- risk factors relating to:
  - the business's customers;
  - countries and geographic areas in which the business operates;
  - its products or services and transactions; and
  - its delivery channels.

The risk assessment must be provided to the regulator on request. The Regulations require a risk-based approach to CDD, with standard, SDD and EDD levels based on the assessed money laundering and terrorist financing risk. EDD must be applied where there is a high risk of money laundering or terrorist financing (Regulation 33). 'High risk' includes, amongst others, where the relationship is with a person in a high-risk third country or the customer is a PEP; in relation to a correspondent banking relationship with a credit or financial institution; or where a transaction is complex or unusually large.

A PEP is defined in Regulation 35 as a person entrusted with a prominent public function. Family members and known close associates of a PEP will also be subject to EDD. Where the person is no longer a PEP, EDD continues to apply for a period of at least 12 months after the date the person ceased to be entrusted with that prominent public function, or for such longer period as the business considers appropriate. PEPs face a higher level of scrutiny, including a focus on their source of wealth and funds, because of the risk that they can abuse their position.

High-risk third countries are those considered by HM Treasury to be jurisdictions with unsatisfactory money laundering and terrorist financing controls. HM Treasury's list replicates those countries listed by the Financial Action Task Force (FATF) as high risk or under increased monitoring.

Under the Regulations, a credit or financial institution must not enter into or continue a correspondent relationship with a shell bank.

Law stated - 28 March 2022

Record-keeping and reporting requirements

Describe the record-keeping and reporting requirements for covered institutions and persons.

Record-keeping

The Regulations require that a regulated business must keep certain documents for five years from the date on which the business knows or has reasonable grounds to believe that the transaction is complete or that the business relationship has come to an end. Once the period has expired, all personal data obtained for the purposes of the Regulations must be deleted, except in certain limited circumstances.

Reporting requirements

As discussed above, there are a number of reporting requirements under POCA. In broad terms, where a person operating in the regulated sector knows, suspects or has reasonable grounds to know or suspect money laundering activity, a SAR must be filed with the National Crime Agency (NCA).

The disclosure, made via a SAR, must be made as soon as practicable after the information or grounds for belief came to them. No offence is committed if there is a reasonable excuse for not making the disclosure, or the information came to a legal adviser or relevant professional adviser in privileged circumstances.

Under section 331 of POCA, a nominated officer, usually the money laundering reporting officer (MLRO), commits an offence if they fail to inform the NCA of disclosures received under section 330 of POCA, where they know or suspect, or have reasonable grounds to know or suspect, that another person is engaged in money laundering.

In practice, a person in the regulated sector is expected to be subject to an AML policy that requires suspicions to be escalated to the MLRO. The MLRO will then consider matters by reference to CDD materials and other information, and then decide whether to file a SAR. The MLRO will also consider whether a DAML SAR is required. In practice, it is not expected that the MLRO will file a SAR in relation to every escalation they receive. They are expected to review matters and consider whether a SAR is required.

Law stated - 28 March 2022

Privacy laws

Describe any privacy laws that affect record-keeping requirements, due diligence efforts and information sharing.

The General Data Protection Regulation (Regulation (EU) 2016/679 (GDPR)) has direct effect across the European Economic Area. Following the end of the Transition Period under the UK-EU Withdrawal Agreement on 1 January 2021, the GDPR is no longer directly applicable in the UK, but has been implemented into the national laws applicable in the UK by virtue of the European Union (Withdrawal) Act 2018, the Data Protection Act 2018 (DPA 2018) and the Data Protection, Privacy and Electronic Communications (Amendments, etc) (EU Exit) Regulations 2019 (the 2019 Regulations). The version of the GDPR that applies in the UK is defined in the DPA 2018 (as amended) as the UK GDPR. The vast majority of the compliance requirements under the UK GDPR are functionally identical to those that exist under the (EU) GDPR.

The DPA 2018 came into force on 25 May 2018, covering the processing of personal data within and outside the scope of the UK GDPR by competent authorities for law enforcement purposes and by the intelligence services.

The UK GDPR and the DPA 2018 require personal data to be processed in accordance with prescribed principles (article 5 of the UK GDPR). There must be a lawful basis for processing (article 6 of the UK GDPR) underpinning the processing of personal data. This includes when processing personal data to conduct CDD. Subject to certain exclusions, data subjects (the individuals whose personal data are being processed) also have the right to know how their personal data will be handled and with whom it will be shared. This is usually achieved through the publishing of a privacy notice. The principles within the legislation also dictate that information should only be kept for as long as necessary and used in a way that is consistent with the purposes for which it is being held. During the CDD process, careful consideration should be given to the volume and extent of personal data that is shared and whether any additional steps need to be taken before it is shared with a third party.

The 2019 Amendments to the Regulations introduced a requirement to provide a new customer with the information required under article 13 of the UK GDPR. This includes a statement explaining that any personal data received from the customer will be processed only for the purposes of preventing money laundering or terrorist financing or as permitted under the Regulations or the UK GDPR or with the consent of the customer.

Personal data should not be transferred outside the UK or a jurisdiction that the UK has deemed adequate for the purposes of cross-border data transfers (noting that the UK has deemed the whole of the EEA, as well as all jurisdictions that have received an EU adequacy decision as of 1 January 2021, to be adequate for UK purposes) unless appropriate protections are in place; to do so is a breach of the UK GDPR and could lead to fines of up to £17.5 million or four per cent of annual global turnover (whichever is higher).

The UK GDPR imposes a general prohibition on the processing of personal data relating to criminal convictions and criminal offences (including allegations of criminal offences) subject to specific exceptions to this general prohibition. Subject to certain conditions, section 339ZB of POCA enables a regulated sector business to request information about a suspected money launderer from another regulated sector business to assist the business in its enquiries.

Similarly, the DPA 2018 also permits the processing of such personal data where it is necessary for preventing or detecting unlawful acts (paragraph 10, Schedule 1 of the DPA 2018) or complying with or assisting other persons to comply with a regulatory requirement that involves taking steps to establish whether a person has committed an unlawful act or has been involved in dishonesty, malpractice or seriously improper conduct (paragraph 12, Schedule 1 of the DPA 2018). However, an appropriate policy document must be in place when relying on the provision at paragraph 12.

Law stated - 28 March 2022

Resolutions and sanctions

What is the range of outcomes in AML controversies? What are the possible sanctions for breach of AML laws?

In addition to the possible outcomes in criminal money laundering cases discussed elsewhere, in some cases, it may be possible to enter into an agreement under the Serious Organised Crime and Police Act 2005 for immunity from prosecution, which usually involves giving evidence in connected criminal proceedings. These agreements are uncommon.

The penalty for corporate defendants is an unlimited fine. Unlike an individual defendant, a corporate defendant can enter into a deferred prosecution agreement (DPA). At the successful conclusion of a DPA, the criminal proceedings against the corporate defendant are concluded.

The UK has a non-conviction-based asset forfeiture regime (the civil recovery regime). Civil recovery investigations and proceedings can be settled.

The Regulations

A breach of the Regulations may attract a financial sanction from the relevant regulator in such amount as considered appropriate, or a breach may receive a censure in the form of a statement published by the regulator. Civil measures may also include: removing 'fit and proper' status from an individual; suspending a firm or individual from undertaking regulated activities; and refusing, suspending or cancelling a business' registration or authorisation. A regulator can also impose a temporary or permanent prohibition on an individual having a management role within a relevant legal person. An injunction may also be obtained in the High Court where there is or may be a breach of a relevant requirement.

As discussed above, in some instances, a breach is a criminal offence and the offence can be committed by a person or a corporate (eg, breach of a relevant requirement under the Regulations). Where a corporate has committed an offence and it can be shown that it was committed with the consent or connivance of an officer of the corporate, or the offence can be attributed to any neglect on the part of an officer, the officer as well as the body corporate is guilty of the offence. The maximum penalty in each case is two years' imprisonment or an unlimited fine, or both.

Regulators may also sanction firms or individuals by reference to other regulatory rules that are in place, for example, the Financial Conduct Authority's Principles for Businesses.

Law stated - 28 March 2022

Limitation periods for AML enforcement

What are the limitation periods governing AML matters?

There are no limitation periods for AML-related criminal conduct.

Law stated - 28 March 2022

Extraterritoriality

Do your jurisdiction's AML laws have extraterritorial reach?

The Regulations apply to the regulated sector carrying on business in the UK and to the UK operations of any foreign business.

The Regulations impose an obligation on UK financial institutions to require its non-EEA branches and subsidiaries to comply with measures equivalent to those set out in the Regulations (including CDD measures and ongoing monitoring and record-keeping).

The courts have held that the primary offences under POCA have some extraterritorial application.

Law stated - 28 March 2022

CIVIL CLAIMS

Procedure

Enumerate and describe the required elements of a civil claim or private right of action against money launderers and covered institutions and persons in breach of AML laws.

In England and Wales, a number of civil claims may be brought against money launderers and potentially also against those who assist them. These types of fraud actions are usually (although not always) grounded in tort and encompass claims based on, inter alia, knowing or unconscionable receipt (including claims for breach of fiduciary duty or breach of trust), dishonest assistance or conspiracy by unlawful means.

Specific principles apply to pleading fraud. These include, among other principles, the requirement to distinctly plead fraud with adequate particularity and to distinctly prove fraud (ie, the party alleging fraud must plead that the other party has committed fraud and plead the primary facts relied on to show the fraudulent conduct and relevant state of mind). Legal advisers are under professional obligations more generally (including in cases of fraud) to only make assertions or put forward statements, representations or submissions that are properly arguable.

Greater damages may be recoverable under such claims than under contractual or certain other tortious claims. Other remedies may also be more readily available, such as rescission and compound interest.

The usual limitation period for claims where the cause of action is in tort is six years from the accrual of the cause of action. However, section 32 of the Limitation Act 1980 suspends that limitation where the action is based on the fraud or deliberate concealment of the defendant. Time will not start running for limitation purposes until the claimant has discovered (or reasonably could have discovered) the fraud or concealment.

Law stated - 28 March 2022

Damages

How are damages calculated?

In the event of a successful claim, a claimant may seek compensation to recover any loss suffered that is attributable to the defendant. As with other claims, the claimant needs to take reasonable steps to mitigate its loss. In some instances, it may be possible to obtain an order for an account of profits permitting the recovery of profits received as a result of the breach of duty to prevent any unjust enrichment. An account of profits may be available even where the claimant has suffered no loss.

Law stated - 28 March 2022

Other remedies

What other remedies may be awarded to successful claimants?

Claimants may obtain mandatory or prohibitory injunctions (including freezing orders and search orders) or an order to account (an order requiring the defendant to show what they have done with the property). A claimant may also obtain a declaration that a defendant holds an identifiable asset on trust for the claimant. Finally, a claimant may obtain different varieties of disclosure orders, including Norwich Pharmacal orders (from innocent third parties, often banks) and other third-party disclosure orders to obtain documents and further information about the fraud and to identify any wrongdoers.

Law stated - 28 March 2022

INTERNATIONAL MONEY LAUNDERING EFFORTS

Supranational

List your jurisdiction's memberships of supranational organisations that address money laundering.

The UK is a long-standing member of Financial Action Task Force (FATF) and a member with a significant role in other supranational organisations, including the International Monetary Fund; the World Bank; the World Customs Organisation; the Organisation for Security and Co-operation in Europe; and the United Nations Office on Drugs and Crime, which houses the International Money Laundering Information Network.

In addition, the National Crime Agency (NCA) currently hosts the International Anti-Corruption Coordination Centre (IACCC) in London.

Law stated - 28 March 2022

Anti-money laundering assessments

Give details of any assessments of your jurisdiction's money laundering regime conducted by virtue of your membership of supranational organisations.

The most recent Mutual Evaluation report of the UK by FATF was published in December 2018. In summary, the report found that the UK has a robust understanding of its money laundering and terrorist financing risks and the strong public-private partnership provided by the Joint Money Laundering Intelligence Taskforce (JMLIT) is a positive feature. JMLIT was established in 2015 and is a public-private partnership between law enforcement, the FCA and financial institutions, which allows an exchange of information on typologies of money laundering and terrorist financing risk and also specific organised crime groups or suspects.

FATF found the outreach of the regulators and the fitness and propriety controls to be strong. There was some criticism of the reliability of the records relating to beneficial ownership and the suspicious activity reporting regime, which was described as requiring a significant overhaul to improve the quality of financial intelligence.

Law stated - 28 March 2022

FIUs

Give details of your jurisdiction's Financial Intelligence Unit (FIU).

The UK Financial Intelligence Unit is independently located within the National Economic Crime Command as part of the NCA. The National Terrorist Financial Investigation Unit is part of the Metropolitan Police Service Counter Terrorism Command, which has the strategic police lead for countering terrorist financing in the UK.

Law stated - 28 March 2022

Mutual legal assistance

In which circumstances will your jurisdiction provide mutual legal assistance with respect to money laundering investigations? What are your jurisdiction's policies and procedures with respect to requests from foreign countries for identifying, freezing and seizing assets?

The UK provides mutual legal assistance (MLA) to any country, regardless of whether there is a reciprocal agreement in place. Reciprocity is only a prerequisite in tax matters. MLA can be used to obtain assistance in the investigation of the proceeds of crime and in the freezing and confiscation of assets.

MLA requests must be submitted in writing to the UK Central Authority (UKCA), which is responsible for receiving and processing requests. An MLA request in relation to tax matters or fiscal customs must be sent to HMRC. Dual criminality is not a prerequisite unless the request is for search and seizure, production orders, and restraint and confiscation.

A request can be submitted to the UKCA by any competent body under the law of the requesting state.

Material, including the taking of evidence on oath, the collection of evidence and the taking of statements may be requested. For more details, see the Home Office's Requests for Mutual Legal Assistance in Criminal Matters Guidance Paper.

The Crime (Overseas Production Orders) Act 2019 came into force on 9 October 2019. It allows law enforcement to obtain an overseas production order (OPO) from a Crown Court judge, requiring a person to produce or provide access to specified electronic data held overseas. An OPO may be made against a person who is operating or based in a country with which the UK has a designated international cooperation arrangement (DICA). A DICA is a treaty relating to the provision of mutual assistance in connection with the investigation or prosecution of offences. OPOs are intended to avoid the formality and delay of an MLA request. To date, there is only one such arrangement in place: between the UK and the United States.

Law stated - 28 March 2022

UPDATE AND TRENDS

Enforcement and compliance

Describe any national trends in criminal money laundering schemes and enforcement efforts. Describe any national trends in AML enforcement and regulation. Describe current best practices in the compliance arena for companies and financial institutions.

Successful prosecution of a bank

In March 2021, the Financial Conduct Authority (FCA) charged a bank with the offence of failing to adhere to

requirements under the Money Laundering Regulations 2007, which was the legislation that preceded and has now been repealed by the Regulations. The bank entered a guilty plea in October 2021 and in December 2021 was fined almost £265 million. This is the first instance of a bank being prosecuted for money laundering in the UK.

Economic Crime Plan 2019–2022

The UK government published its Economic Crime Plan 2019–2022 in July 2019. The Economic Crime Plan identified economic crime, including money laundering, as a national security threat. Among other pledges, the UK government promised to 'bolster' the National Economic Crime Centre (NECC). The NECC was established in October 2018 and is based within the National Crime Agency (NCA). Its objective is to coordinate the capabilities of the public and private sector to improve the response to economic crime. It has a particular focus on money laundering and corruption offences. The NECC seeks to maximise new powers, including unexplained wealth orders and account freezing orders.

The NECC houses the Joint Money Laundering Intelligence Taskforce (JMLIT). The JMLIT comprises law enforcement bodies including the NCA, HMRC, Serious Fraud Office, the City of London Police and the Metropolitan Police Service. It seeks to enhance economic crime enforcement capabilities by facilitating information sharing between law enforcement and the financial sector and allowing for live intelligence sharing.

The NECC has said that it intends 'to make the UK a hostile environment for money laundering' and that it will do so by targeting individuals engaged in money laundering (with a view to securing their prosecution and conviction), recovering and confiscating assets, and training financial investigators.

The UK government's most recent Progress Report was published in April 2021, which outlined the steps taken so far in relation to the requirements of the Economic Crime Plan, but a wide range of priority actions have yet to be fully progressed.

Reform of SAR Regime

In June 2019, the Law Commission, an independent body set up by the UK Parliament to keep the law under review, published its paper 'Anti-money laundering: the SARS regime'. It had been asked by the UK government to review, and make recommendations for reform of, aspects of the suspicious activity reports (SARs) regime. It made a number of recommendations, including the creation of an advisory board to create guidance and to advise the government on how the SARs regime can be improved, the retention of the consent regime, and the limiting of the scope of reporting obligations. The government has yet to respond to the recommendations. However, in the government's Economic Crime Plan 2019–2022, published in July 2019, one of the key deliverables, in line with the Financial Action Task Force's 2018 UK report, is the commitment to reform the SARs regime and the UK Financial Intelligence Unit in such a way that they operate to produce 'richer intelligence' and 'improve operational effectiveness'.

A February 2022 House of Commons Committee report on Economic Crime has recently expressed disappointment that the SARs reform programme is not yet complete and noted that no timetable or target date for its completion has been published.

Economic Crime Levy

In the March 2020 Budget, the Chancellor of the Exchequer announced the intention of the government to introduce an economic crime levy to be paid by banks and other regulated businesses to help fund the fight against money laundering and terrorist financing. Following a consultation that focused on what the levy will pay for, how it should be calculated and how it should be collected and distributed across the AML regulated sector, the government's response to the consultation was published alongside the draft legislation on 21 September 2021.

The Economic Crime (Anti-Money Laundering) Levy (the Levy) will be imposed on entities that are regulated for AML purposes. The Levy will be paid as a fixed fee based on the size band an AML-regulated entity falls into based on their UK revenue. The introduction of the Levy is expected to raise £100 million per year. The Finance Act 2022, published on 1 March 2022, contains provisions relating to the Levy which will take effect for the financial year beginning April 2022. The mechanics of the Levy are contained in the Economic Crime (Anti-Money Laundering) Levy Regulations 2022 (SI 2022/296), which came into force on 1 April 2022.

Once the Levy is established, the government intends to prepare and publish an annual report on the Levy and a broader review by the end of 2027.

Beneficial ownership registers

There has been a focus on increasing transparency of ownership, and the UK government has stated its intention to have registers of beneficial ownership for three different types of assets: companies; trusts; and real estate property and land. The PSC register regarding companies has been publicly available since 2016. The register for trusts was introduced in 2017, but is not public.

On 15 March 2022, the UK passed the Economic Crime (Transparency and Enforcement) Act, which introduces a new register of overseas entities. The register will include information about overseas entities that own UK property and their beneficial owners. The new register applies retrospectively to property bought since January 1999 in England and Wales and since December 2014 in Scotland. An overseas entity that owns such property will be required to register with Companies House (the UK registrar for companies), take reasonable steps to identify its beneficial owners and provide verified information about them to Companies House. Some information on the register – including the identities of overseas entities and beneficial owners – will be open for public inspection.

British Overseas Territories have committed to introduce registers of beneficial ownership by the end of 2023. Crown Dependencies have committed to do so after the EU reviews the implementation of its own public registers in 2022 or 2023.

Cryptocurrencies

Certain enforcement authorities are increasingly recognising the risks associated with the increased use of cryptocurrencies and their potential utility to money launderers. In June 2021, the FCA banned a cryptocurrency exchange from carrying on regulated activities in the UK due to money laundering concerns.

Law stated - 28 March 2022

Jurisdictions

Australia	Gilbert + Tobin
Denmark	Poul Schmith/Kammeradvokaten
France	Spitz Poulle Kannan AARPI
Germany	Park Wirtschaftsstrafrecht
Greece	ANAGNOSTOPOULOS
Hong Kong	Herbert Smith Freehills LLP
India	AZB & Partners
Italy	Studio Legale Pisano
Japan	Anderson Mōri & Tomotsune
Luxembourg	Allen & Overy LLP
South Korea	Yoon & Yang LLC
Switzerland	Homburger
United Kingdom	White & Case LLP
USA	Gibson Dunn & Crutcher LLP