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Practical cross-border insights into anti-money laundering law

Anti-Money Laundering 2022

Fifth Edition

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1 The Crime of Money Laundering and Criminal Enforcement

1.1 What is the legal authority to prosecute money laundering at the national level?

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) are the principal laws used to prosecute money laundering.

Other laws relevant to money laundering are the Terrorism Act 2000 (TACT), which contains offences relating to terrorist financing, and the Sanctions and Anti-Money Laundering Act 2018 (SAMLA), which 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 also enables the UK to create its own national sanctions framework for imposing sanctions.

1.2 What must be proven by the government to establish money laundering as a criminal offence? What money laundering predicate offences are included? Is tax evasion a predicate offence for money laundering?

POCA applies to alleged money laundering conduct that occurred on or after 24 February 2003. There are three primary substantive money laundering offences under POCA, which are considered in further detail below.

Underlying each money laundering offence is the concept of '*criminal property*' (i.e. the proceeds of crime). In relation to each money laundering offence, the prosecution must prove that the property in question is criminal property. Criminal property is defined in POCA as property that constitutes a person's benefit from '*criminal conduct*' or represents such a benefit, in whole or part, and whether directly or indirectly. Criminal conduct is conduct which 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 (section 340 POCA). For the purposes of POCA, it is immaterial who carried out the criminal conduct, who benefitted from it and whether the underlying criminal conduct itself occurred before or after the coming into force of POCA.

The prosecution must also prove that the person accused of money laundering knew or suspected that the property is criminal property. The threshold for suspicion required to prove that a person knows or suspects that property is criminal property (i.e. the proceeds of crime) is low. For these purposes, '*suspicion*' is as defined by 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 be sufficient.

The three primary substantive money laundering offences under POCA are:

(1) concealing, disguising, converting, transferring or removing criminal property from England and Wales or from Scotland or Northern Ireland (section 327 POCA);

(2) entering into or becoming concerned in an arrangement, and 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 POCA); and

(3) acquiring, using or possessing criminal property (section 329 POCA).

It is a defence to a primary money laundering offence if: (i) 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 (ii) appropriate consent is given or deemed given before any act is done. Further details on the consent regime are outlined at question 3.11 below. Such a SAR is also known as a '*Defence Against Money Laundering SAR*' (DAML SAR).

A person does not commit an offence under section 329 POCA if he acquired, used or had possession of the property for '*adequate consideration*' (section 329(2)(c) POCA). This defence is available, for example, where the criminal property has been acquired through receipt of monies in relation to 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) POCA.

The Regulations cover obligations that regulated firms have in relation to anti-money laundering (AML) and counter-terrorist financing (CTF), and implement the Fourth and Fifth EU Money Laundering Directives. The Sixth EU Money Laundering Directive does not apply to the UK as the UK decided to opt out of implementing the Directive in September 2017, and has since exited the EU.

Failing to meet obligations under the Regulations is a criminal offence under Regulation 86; the Regulations also create other offences (e.g., prejudicing an investigation and providing false or misleading information).

1.3 Is there extraterritorial jurisdiction for the crime of money laundering? Is money laundering of the proceeds of foreign crimes punishable?

The primary money laundering offences have been held to have some extraterritorial application. A person not in the UK can

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be prosecuted for a money laundering offence in the UK where there is a UK nexus; for example, where their conduct took place entirely outside the UK in circumstances where 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).

Where the proceeds of foreign crimes are laundered in the UK, the essential question is whether the property is criminal property, namely property which 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.

1.4 Which government authorities are responsible for investigating and prosecuting money laundering criminal offences?

The principal authorities that investigate money laundering offences are the police, the NCA and HM Revenue & Customs (HMRC). The Crown Prosecution Service will prosecute following the investigation. The Serious Fraud Office (SFO) investigates and prosecutes allegations involving serious or complex fraud or corruption, which can involve money laundering. Similarly, the Financial Conduct Authority (FCA) investigates and prosecutes matters involving regulated entities or activities.

1.5 Is there corporate criminal liability or only liability for natural persons?

Under UK law, criminal liability attaches to both legal and natural 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 the identification of a person or persons representing the '*controlling mind and will*' of the company, 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, a statutory independent body, is producing a report on potential areas of reform which is expected to be published in 2022.

Under the Regulations, it is a criminal offence for a corporate to contravene a relevant requirement in relation to AML policies and procedures. This is a strict liability offence and the directing mind principles are not applicable.

1.6 What are the maximum penalties applicable to individuals and legal entities convicted of money laundering?

The primary money laundering offences under POCA carry a maximum penalty of 14 years' imprisonment and/or an unlimited fine.

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 in relation to offences under POCA and the Regulations.

The sentencing process may result in ancillary orders (e.g., a confiscation order), which are covered in more detail below.

1.7 What is the statute of limitations for money laundering crimes?

Under UK criminal law, there is no limitation period for the prosecution of offences, save in respect of summary-only offences (which are offences triable only in the Magistrates' Court, the lower criminal court). This applies equally to money laundering offences. The only requirement is that the money laundering offence was committed after the POCA commencement date (24 February 2003); the date of the underlying criminal conduct that gave rise to the criminal property is immaterial.

1.8 Is enforcement only at national level? Are there parallel state or provincial criminal offences?

Under UK law, there are no parallel state or provisional criminal offences. There are three separate criminal justice systems: England and Wales; Scotland; and Northern Ireland. POCA's money laundering offences under Part 7 apply throughout the UK.

The governing principle is that a person will be prosecuted under the criminal justice system in which the conduct occurred or is justiciable.

1.9 Are there related forfeiture/confiscation authorities? What property is subject to confiscation? Under what circumstances can there be confiscation against funds or property if there has been no criminal conviction, i.e., non-criminal confiscation or civil forfeiture?

A number of procedures are available to deprive a money laundering offender of the proceeds of crime. In the case of a convicted defendant, the authority that investigates or prosecutes is usually the authority that has conduct of the confiscation or forfeiture proceedings.

Confiscation

A confiscation order may be made against a person following a conviction for a criminal offence in the Crown Court and following a committal (or sending) for sentence (or for the purposes of confiscation) from the Magistrates' Court to the Crown Court. The order is not directed at specific property but is made for the recovery of a sum said to represent the value of the benefit from criminal conduct. A period of imprisonment in default of payment of that sum must be set by the court at the time of making the confiscation order.

Civil recovery

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 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 to the commission of a gross human rights abuse or violation and, if it had occurred in the UK, would be an indictable offence.

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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

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. An AFN involves a more administrative process that law enforcement can use.

Compensation

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.

Disgorgement

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

1.10 Have banks or other regulated financial institutions or their directors, officers or employees been convicted of money laundering?

Until March 2021, no bank had ever been prosecuted in the UK for money laundering, although such a prosecution was theoretically possible. In March 2021, the 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.

We have not identified any case in which a director or officer of a financial institution has been convicted of an offence under POCA or the Regulations.

1.11 How are criminal actions resolved or settled if not through the judicial process? Are records of the fact and terms of such settlements public?

A corporate defendant may enter into a DPA once criminal proceedings have been commenced. A DPA is an agreement reached between a prosecutor and a corporate that could be prosecuted, under the supervision of the courts. A DPA requires an admission of some wrongdoing but does not involve a criminal conviction. A DPA must be approved by a judge and will contain certain conditions that may include the payment of a fine, disgorgement of any benefit from the wrongdoing, payment of prosecution costs, cooperation with an ongoing investigation and a monitoring period of its compliance programme. The declaration of the DPA, the court's reasoning and an agreed statement of facts is made public. A DPA is for a fixed period, at the expiry of which the criminal proceedings against the corporate entity are formally concluded. A breach of the conditions of a DPA may lead to the recommencement of criminal proceedings. DPAs are not available to individual defendants.

A DPA may be available in relation to the substantive money laundering offences as well as in relation to the criminal offence under the Regulations of contravening a relevant requirement in relation to AML policies and procedures.

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.

As discussed at question 1.9 above, the UK has a non-conviction-based asset forfeiture regime (the civil recovery regime). Civil recovery investigations and proceedings under the civil recovery regime can be settled.

The FCA also has the power to impose financial penalties on regulated firms for breaches of the Regulations or its regulatory rules. The FCA is not currently able to enter into a DPA.

1.12 Describe anti-money laundering enforcement priorities or areas of particular focus for enforcement.

In July 2019, the UK government published its Economic Crime Plan, setting out a series of '*priority actions*' for 2019–2022, which for the first time identified economic crime, including money laundering, as a national security threat. Amongst other pledges, the UK government promised to '*bolster*' the National Economic Crime Centre (NECC), which houses the Joint Money Laundering Intelligence Taskforce (JMLIT). The JMLIT comprises law enforcement bodies including the NCA, HMRC, SFO, 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.

As discussed at question 1.10 above, the FCA has successfully prosecuted a corporate entity for its failures to comply with the Money Laundering Regulations 2007. The FCA stated in its most recent business plan that it will continue to use its criminal powers in relation to AML breaches where necessary.

The rise of cryptocurrencies and their potential utility to money launderers has been increasingly recognised by the enforcement authorities responsible for pursuing breaches of the Regulations. Significantly, in June 2021, the FCA banned a cryptocurrency exchange from carrying on regulated activities in the UK due to money laundering concerns.

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2 Anti-Money Laundering Regulatory/ Administrative Requirements and Enforcement

2.1 What are the legal or administrative authorities for imposing anti-money laundering requirements on financial institutions and other businesses? Please provide the details of such anti-money laundering requirements.

The Regulations provide the framework for imposing AML requirements on financial institutions and other businesses in the regulated sector.

Regulated businesses are required to (amongst other things): carry out a risk assessment which identifies and assesses the risk of money laundering and terrorist financing to its business; establish and maintain policies, controls and procedures to effectively manage those risks; and apply customer due diligence (CDD) measures. There are also obligations under POCA to make a SAR where a person in the regulated sector knows, suspects or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering.

The Regulations are supplemented by rules or guidance from relevant supervisory authorities. Breach of these rules can lead to regulatory enforcement action.

For example, the FCA Handbook requires financial institutions authorised by the FCA to establish and maintain effective systems and controls for countering financial crime risk. Requirements regarding AML compliance are set out in the Senior Management Arrangements, Systems and Controls section of the FCA Handbook. The FCA will take into account guidance published by the Joint Money Laundering Steering Group (JMLSG) when deciding whether to take enforcement action against a regulated firm.

2.2 Are there any anti-money laundering requirements imposed by self-regulatory organisations or professional associations?

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

Businesses operating in the non-regulated sector are not under an obligation to have AML measures in place, but they may consider it prudent to implement measures to mitigate AML risk.

2.3 Are self-regulatory organisations or professional associations responsible for anti-money laundering compliance and enforcement against their members?

The FCA, HMRC, the Gambling Commission and 22 other professional bodies act as supervisory authorities under POCA and 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 AML systems and controls.

The Office for Professional Body Anti-Money Laundering Supervision (OPBAS), established in 2018, is based within the FCA, and 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.

2.4 Are there requirements only at national level?

The Regulations operate at UK level. In general, regulators also operate at UK level, although the legal and accounting professions have different supervisory bodies in Scotland and Northern Ireland.

2.5 Which government agencies/competent authorities are responsible for examination for compliance and enforcement of anti-money laundering requirements? Are the criteria for examination publicly available?

The FCA, HMRC, the Gambling Commission and 22 other professional bodies act as supervisory authorities under POCA and the Regulations. Supervisory authorities are obliged to make available information on money laundering and terrorist financing to those they supervise.

2.6 Is there a government Financial Intelligence Unit ("FIU") responsible for analysing information reported by financial institutions and businesses subject to anti-money laundering requirements?

The UK's FIU sits within the NCA.

2.7 What is the applicable statute of limitations for competent authorities to bring enforcement actions?

As is the general rule in English criminal law, offences, save summary-only offences, have no limitation period. Thus, there is no statute of limitations for money laundering offences under POCA or the Regulations.

2.8 What are the maximum penalties for failure to comply with the regulatory/administrative anti-money laundering requirements and what failures are subject to the penalty provisions?

The maximum penalty is an unlimited fine.

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

- carrying out a risk assessment which 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 CDD measures on a risk-based approach.

2.9 What other types of sanction can be imposed on individuals and legal entities besides monetary fines and penalties?

In addition to criminal sanctions, a regulator can impose civil measures for failing to comply with the Regulations. These may include: removing '*fit and proper*' status from an individual; suspending a firm or individual from undertaking regulated activities; refusing, suspending or cancelling a business' registration or authorisation; and making a public statement censuring a business. A regulator can also impose a temporary or permanent prohibition

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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.

In some instances, a supervisory authority such as the FCA may issue a warning notice.

An individual convicted of a money laundering offence may be disqualified from acting as a company director for a fixed period.

2.10 Are the penalties only administrative/civil? Are violations of anti-money laundering obligations also subject to criminal sanctions?

Both POCA and the Regulations contain criminal offences relating to money laundering activity.

The Regulations contain criminal offences, including three criminal offences found in Regulations 86–88 relating to:

- breaching a requirement of the Regulations (Regulation 86);
- making a disclosure which is likely to prejudice an investigation, or falsifying, concealing or destroying or otherwise disposing of documents relevant to the investigation, or causing or permitting 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 (Regulation 87); or
- providing false or misleading information, knowing that it is false or misleading or reckless to the fact (Regulation 88).

These offences apply to corporates and individuals. Where a corporate commits an offence under Regulations 86–88, an officer as well as the corporate is guilty of the offence if 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 (Regulation 92).

2.11 What is the process for assessment and collection of sanctions and appeal of administrative decisions? a) Are all resolutions of penalty actions by competent authorities public? b) Have financial institutions challenged penalty assessments in judicial or administrative proceedings?

Each relevant supervisory authority will follow its guidance and processes for the assessment and collection of sanctions and the appeal of administrative decisions. A decision by the regulator/supervisory authority may be appealed to, for example, the High Court or the Upper Tribunal.

Each supervisory authority will publish its decisions unless there is a good reason for this not to take place.

We are not aware of any appeal by a financial institution challenging the assessment of a penalty.

3 Anti-Money Laundering Requirements for Financial Institutions and Other Designated Businesses

3.1 What financial institutions and non-financial businesses and professions are subject to anti-money laundering requirements? Describe any differences in the anti-money laundering requirements that each of them are subject to.

Businesses undertaking one of the activities listed in Schedule 9 of POCA and '*relevant persons*' under the Regulations are in the regulated sector. These include:

- 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.

The Regulations apply to the conduct of relevant persons and impose obligations in relation to risk assessments, implementing appropriate policies and procedures and knowing their customer, amongst other things. Regulated firms will also have to address guidance given by their regulators.

The Senior Management Arrangements, Systems and Controls section of the FCA Handbook imposes additional obligations on financial institutions to ensure directors and senior managers have practical responsibility for organising and controlling the firm's affairs in accordance with FCA principles.

3.2 Describe the types of payments or money transmission activities that are subject to anti-money laundering requirements, including any exceptions.

Money service businesses (MSBs) may be registered with HMRC and/or the FCA and must comply with the Regulations.

UK government guidance defines an MSB as a business that:

- acts as a currency exchange office (a bureau de change);
- transmits money or any representation of money by any means (money remittance); or
- cashes cheques payable to their customers (third-party cheque cashing).

3.3 To what extent have anti-money laundering requirements been applied to the cryptocurrency industry? Describe the types of cryptocurrency-related businesses and activities that are subject to those requirements.

On 10 January 2020, the Regulations were amended in order to implement the Fifth EU Money Laundering Directive, which meant that crypto-asset exchange providers and custodian wallet providers were brought within the regulated sector.

As a result, the Regulations apply to: crypto-asset businesses, including crypto-asset exchange providers; crypto-asset automated teller machines (ATMs); peer-to-peer providers; and the issuing of new crypto-assets, including Initial Coin Offerings or Initial Exchange Offerings. Custodian wallet providers also fall within the Regulations.

The FCA is the regulator for all crypto-asset businesses in the UK.

3.4 To what extent do anti-money laundering requirements apply to non-fungible tokens ("NFTs")?

Non-fungible tokens (NFTs) (also known as crypto-collectibles) are certificates of ownership stored on a blockchain. They are normally associated with digital assets, such as visual art, videos, music or collectibles. Rather than being considered methods of payment or investment instruments for the purposes of AML regulation, they are considered collectibles, and therefore do not fall within the Regulations.

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However, guidance issued by the FCA states that NFTs should be considered on a case-by-case basis. In considering whether AML requirements may apply, an analysis should be undertaken that looks at the manner in which an NFT is sold or marketed and how it is used as a form of value. These factors will determine whether or not the NFT falls outside of the AML regulatory regime.

3.5 Are certain financial institutions or designated businesses required to maintain compliance programmes? What are the required elements of the programmes?

Yes, the Regulations do impose an obligation on regulated businesses, as described in question 3.1 above, to implement an appropriate AML and CTF compliance programme. These requirements are supplemented by regulatory requirements and guidance.

3.6 What are the requirements for recordkeeping or reporting large currency transactions? When must reports be filed and at what thresholds?

The Regulations do not contain specific requirements for keeping a record of or reporting large currency transactions.

3.7 Are there any requirements to report routinely transactions other than large cash transactions? If so, please describe the types of transactions, where reports should be filed and at what thresholds, and any exceptions.

No, the Regulations do not impose a requirement to report non-cash transactions.

3.8 Are there cross-border transactions reporting requirements? Who is subject to the requirements and what must be reported under what circumstances?

No, there is no specific obligation to report cross-border transactions.

3.9 Describe the customer identification and due diligence requirements for financial institutions and other businesses subject to the anti-money laundering requirements. Are there any special or enhanced due diligence requirements for certain types of customers?

The Regulations impose an obligation on regulated businesses to apply CDD in certain circumstances. For example, where a regulated business:

- establishes a business relationship;
- carries out an occasional transaction that amounts to a transfer of funds within the meaning of article 3.9 of the Funds Transfer Regulation (see question 3.14) exceeding €1,000;
- suspects money laundering or terrorist financing; or
- doubts the veracity or adequacy of documents or information previously obtained for the purposes of identification or verification.

CDD measures must include verifying the identity of the customer (or the beneficial owner, where applicable), assessing the purpose and intended nature of the business relationship or occasional transaction and obtaining information in relation to it, where appropriate.

CDD is applied using a risk-based approach. A regulated firm can apply simplified due diligence (SDD) measures in relation to a particular business relationship or transaction if it determines that there is a low risk of money laundering or terrorist financing. For example, SDD could be applied to a company listed on the New York Stock Exchange or a financial firm regulated by the FCA.

In contrast, enhanced due diligence (EDD) must be applied where there is a higher risk of money laundering or terrorist financing. Factors relevant to the assessment of risk can include where the potential customer is based in a high-risk country or where the potential customer is a politically exposed person (PEP). PEPs are individuals entrusted with a prominent public function (i.e. a senior public official rather than a middle-ranking or more junior official).

A firm must have systems and controls in place to determine whether a customer is a PEP or is beneficially owned by a PEP. PEPs are considered higher risk from a money laundering or terrorist financing perspective, as they can abuse their position. The greater care that firms must take in their dealings with a PEP also applies to the PEP's known close associates and immediate family members (such as their spouse or civil partner, parents, children and spouse's or civil partner's children).

EDD measures must include obtaining additional information on the customer and its beneficial owner, the intended nature of the business relationship, the source of funds and source of wealth of the customer and the reasons for the transaction. EDD also requires the approval of senior management for establishing or continuing the business relationship, and for that relationship to be the subject of enhanced ongoing monitoring.

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 regulated business considers appropriate.

3.10 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to the prohibition?

Credit institutions and financial institutions are prohibited from entering into or continuing a correspondent relationship with a shell bank.

A '*shell bank*' is defined as a credit institution or financial institution (or an institution engaged in equivalent activities) that is incorporated in a jurisdiction in which it has no physical presence involving meaningful decision-making and management, and which is not part of a financial conglomerate or third-country financial conglomerate.

3.11 What is the criteria for reporting suspicious activity?

There are obligations applicable to those in the regulated sector to report suspicious activity under POCA. The failure to report suspicious activity in the circumstances set out in the relevant provisions constitutes a criminal offence.

Those operating in the regulated sector face criminal liability under section 330 POCA if they fail to make a report in circumstances where:

- the person knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering;

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- the information on which the knowledge or suspicion is based (or which gives rise to reasonable grounds for such) came to the person in the course of a business in the regulated sector; and
- the person is able to identify the other person or the whereabouts 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.

Liability can be avoided if a SAR is made externally to the NCA. In practice, a person in the regulated sector is expected to be subject to an AML policy that requires SARs to be escalated internally to a nominated officer, usually the Money Laundering Reporting Officer (MLRO). Regulated firms are required to appoint a nominated officer.

Once the nominated officer receives an escalation, they will then consider matters by reference to CDD materials and other information, and then decide whether to file a SAR. A nominated officer will face criminal liability under section 331 POCA if they fail to inform the NCA of disclosures they received under section 330 POCA, where they know or suspect, or have reasonable grounds to know or suspect that another person is engaged in money laundering. A SAR made in these circumstances is sometimes called an '*intelligence only SAR*'. In practice, it is not expected that a nominated officer will file a SAR in relation to every escalation they receive. They are expected to review matters and consider whether a SAR is required.

The SAR must be made as soon as practicable after the information or grounds for belief came to that person. 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.

Those outside the regulated sector are not required to appoint a nominated officer, but if non-regulated sector organisations choose to appoint a nominated officer, then the nominated officer has an obligation to report suspicious activity under POCA. 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.

The failure to report offences under POCA are punishable with a maximum penalty of five years' imprisonment and/or a fine.

It is a defence to a primary money laundering offence if: (i) an '*authorised disclosure*' is made to the NCA seeking consent to proceed with activity that would otherwise potentially constitute a money laundering offence; and (ii) appropriate consent is given or deemed given before any act is done. An authorised disclosure is made via a SAR. Such a disclosure is known as a DAML SAR or a '*consent SAR*'.

A DAML SAR allows the NCA an opportunity to grant or refuse consent for a relevant transaction. In the absence of a response from 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 within that seven-working-day period, consent is refused, a moratorium period of 31 calendar days begins, after which consent is again deemed to have been given. The moratorium period may be extended by the Crown Court a number of times up to a maximum of 217 days, including the initial 31 days. The moratorium period allows law enforcement time to take further investigative steps and/or seek to freeze or forfeit property.

A person operating in the regulated sector commits a '*tipping-off*' offence if they disclose either that a SAR has been made or that a money laundering investigation is being contemplated or underway, where that '*tip off*' is likely to prejudice any investigation arising out of the SAR. The tipping-off offence is punishable with a maximum penalty of two years' imprisonment.

It is also an offence (inside or outside the regulated sector) to make a disclosure that is likely to prejudice a money laundering 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 underway or planned (section 342 POCA). It is a defence to show that the person did not know or suspect that the disclosure was likely to prejudice the investigation. The offence of prejudicing an investigation is punishable with a maximum penalty of five years' imprisonment. There is also a similar regime that applies to terrorist financing.

3.12 What mechanisms exist or are under discussion to facilitate information sharing 1) between and among financial institutions and businesses subject to anti-money laundering controls, and/or 2) between government authorities and financial institutions and businesses subject to anti-money laundering controls (public-private information exchange) to assist with identifying and reporting suspicious activity?

The UK is placing an increasing emphasis on public-private partnership. This began with JMLIT in 2015, which allowed law enforcement agencies, the FCA and financial institutions to share information on types of money laundering and terrorist financing risk and organised crime groups. Since its creation, JMLIT has generated positive results and is perceived as a success. Consequently, the UK has assisted other jurisdictions to set up similar public-private partnerships.

In 2018, the NECC was established within the NCA to coordinate and task the UK's response to economic crime. The NECC is intended to harness intelligence and capabilities from across the public and private sectors to tackle economic crime, with a focus on money laundering and corruption offences. The NECC will also seek to maximise the use of Unexplained Wealth Orders and AFrOs.

The enforcement priorities of the NECC are discussed above at question 1.12.

3.13 Is adequate, current, and accurate information about the beneficial ownership and control of legal entities maintained and available to government authorities? Who is responsible for maintaining the information? Is the information available to assist financial institutions with their anti-money laundering customer due diligence responsibilities as well as to government authorities?

A beneficial ownership register called the register of Persons with Significant Control (PSC) was created in 2016. The PSC register is publicly available at Companies House. Concerns have been raised about its accuracy and in relation to the number of successful applications for information about PSCs to be suppressed from the register.

There is also an obligation to report to Companies House, in relation to beneficial ownership, any discrepancy 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 (see Regulation 30A(2)).

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3.14 Is it a requirement that accurate information about originators and beneficiaries be included in payment orders for a funds transfer? Should such information also be included in payment instructions to other financial institutions? Describe any other payment transparency requirements for funds transfers, including any differences depending on role and domestic versus cross-border transactions.

The EU Wire Transfer Regulation ((EU) 2015/847), also known as the Funds Transfer Regulation, was retained in UK law following the UK's exit from the European Union. The Funds Transfer Regulation specifies the information that must accompany electronic transfers of funds carried out by payment service providers. It requires that '*complete information*' about the payer and payee must be obtained in relation to any funds transfer.

The information about a payer must include their name, full postal address, and the account number or unique identifier that would allow the transaction to be traced back to the payer. If the full postal address is not known, the information should include either their date and place of birth, customer identification number or national identity number; for example, a passport number. The complete information about a payee must include their name and account number or unique identifier (to allow the transaction to be traced back to them).

The information must be verified where the transfer is for €1,000 or more (whether carried out in a single transaction or in several transactions that appear linked), or any part of the transfer is funded by cash or anonymous electronic money. The complete information must be verified where there will be transfers on a regular basis or where a business relationship is developed.

In the UK, the FCA is the supervisory authority for monitoring compliance with the Funds Transfer Regulation. When determining whether to grant authorisation to payment service providers (which undertake funds transfers), the FCA requires applicant firms to give an overview of their AML systems and controls, which includes the control mechanisms that the applicant firm will establish to ensure compliance with the Funds Transfer Regulation.

3.15 Is ownership of legal entities in the form of bearer shares permitted?

No. Bearer shares were abolished in May 2015.

3.16 Are there specific anti-money laundering requirements applied to non-financial institution businesses, e.g., currency reporting?

The Regulations apply to all '*relevant persons*' acting in the course of business carried on by them in the UK. A list of such '*relevant persons*' is set out in question 3.1 above, and contains non-financial institution businesses such as independent legal professionals.

With regard to '*currency reporting*', we understand this to be a US-specific concept that requires financial institutions to report currency transactions that are over a certain size. The FCA does not impose an equivalent requirement on firms that are within its supervisory purview, nor do the UK Money Laundering Regulations impose a similar requirement on non-financial institutions generally.

The primary money laundering offences under POCA apply generally to all persons where conduct falls within its provisions.

3.17 Are there anti-money laundering requirements applicable to certain business sectors, such as persons engaged in international trade or persons in certain geographic areas such as free trade zones?

Under the Regulations, an art market participant includes the operator of a freeport storing works of art with a value of €10,000 or more for a person or a series of linked persons. A freeport is a warehouse or storage facility in an area designated by the Treasury as a special area for customs purposes.

There are no other specific AML requirements applicable to persons engaged in international trade or to persons in certain geographic areas.

3.18 Are there government initiatives or discussions underway regarding how to modernise the current anti-money laundering regime in the interest of making it more risk-based and effective, including by taking advantage of new technology, and lessening the compliance burden on financial institutions and other businesses subject to anti-money laundering controls?

The National Data Exploitation Capability (NDEC) is an initiative of the NCA intended to provide greater large-scale data analysis capabilities to support the understanding of data and to assist in profiling money laundering activities. The NDEC is intended to improve the efficiency of the NCA's processing and exploitation of data to support its response to serious and organised crime.

There is also some discussion about the use of '*RegTech*' (regulatory technology), which provides technological solutions to the compliance burden faced by regulated businesses, including financial institutions. There are a large number of RegTech solutions, including artificial intelligence, data mining and analytics, real time reporting and machine learning, which assist in compliance with regulatory requirements.

3.19 Describe to what extent entities subject to anti-money laundering requirements outsource anti-money laundering compliance efforts to third parties, including any limitations on the ability to do so. To what extent and under what circumstances can those entities rely on or shift responsibility for their own compliance with anti-money laundering requirements to third parties?

Outsourcing of CDD requirements is permitted under the Regulations, subject to conditions and on the basis that the relevant person remains liable for any failure to apply such measures.

Under the Regulations, the relevant person must immediately obtain from the third party all information needed to satisfy the relevant CDD requirements in relation to not just the customer, but also to the customer's beneficial owner and any person acting on behalf of the customer.

The relevant person must also be able to immediately obtain all supporting documentation gathered by the third party, and ensure that the third party retains copies of the documentation for five years beginning on the date on which the relevant person knows, or has reasonable grounds to believe, that the transaction is complete or the business relationship has come to an end.

The Regulations make clear that a relevant person may only rely on a third party for these purposes if: that person is another relevant person who carries on business in the UK and is subject to the Regulations; or (if the third party carries on business in another country) that person is subject to requirements

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in relation to CDD and record keeping which are equivalent to those required by the Fourth Money Laundering Directive (4MLD), and that person is supervised for compliance with those requirements in a manner which is equivalent to that required by the 4MLD. Such reliance may only be placed on a third party based in a high-risk jurisdiction if strict conditions are met.

There are no requirements within the Regulations which state that there must be a written agreement in place between the relevant person and the third party in relation to the outsourcing of CDD obligations. However, relevant guidance from the JMLSG suggests that the use of '*pro forma confirmations*' is an appropriate way '*to standardise the process of firms confirming to one another that appropriate CDD measures have been carried out on customers*'. FCA guidance on this topic suggests that requesting CDD '*sample documents*' from the third party in order to '*test their reliability*' is an example of good practice.

4 General

4.1 If not outlined above, what additional anti-money laundering measures are proposed or under consideration?

In July 2019, the UK government published its Economic Crime Plan for the years 2019–2022. It identified key actions and set out seven priority areas: (i) understanding the threat posed by economic crime and performance metrics; (ii) better information-sharing within and between the public and private sectors; (iii) the powers, procedures and tools of law enforcement; (iv) enhanced capabilities to detect, deter and disrupt economic crime; (v) risk-based supervision and risk management; (vi) transparency of ownership of legal entities and arrangements; and (vii) international strategy. 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.

In an effort to improve transparency of ownership, 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. The UK government has not yet announced a date for the introduction of legislation for a public beneficial ownership register for real estate property and land. An Economic Crime Bill is expected during the 2022–23 Parliamentary session, which could include provisions establishing such a register.

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.

In June 2019, the Law Commission, a statutory independent body, published its report on the SARs regime. It had been asked by the UK government to review, and make recommendations for reform of, aspects of the SARs regime. The Law Commission made recommendations including the introduction of an Advisory Board to oversee the drafting of guidance and to continue to measure the effectiveness of the regime. The Law Commission also recommended retaining the consent regime, and prescribing the form of a SAR to enhance the quality of reporting. Although it has not formally responded to the Law Commission's report, in its publication, '*The Integrated Review of Security, Defence, Development and Foreign Policy*', the UK government stated that it intends to overhaul the SARs regime.

4.2 Are there any significant ways in which the anti-money laundering regime of your country fails to meet the recommendations of the Financial Action Task Force ("FATF")? What are the impediments to compliance?

The most recent Mutual Evaluation report of the UK by FATF was published in December 2018 and concluded that the UK has implemented an AML/CTF system that is effective in many respects. It found that particularly good results are being achieved in the areas of: investigation and prosecution of money laundering and terrorist financing; confiscation; and the implementation of targeted financial sanctions related to terrorism and proliferation. However, it also found that major improvements were needed to strengthen supervision and the implementation of preventive measures, particularly in relation to the SARs regime, to ensure that financial intelligence is fully exploited. The report also criticised the reliability of records relating to beneficial ownership.

4.3 Has your country's anti-money laundering regime been subject to evaluation by an outside organisation, such as the FATF, regional FATFs, Council of Europe (Moneyval) or IMF? If so, when was the last review?

The most recent Mutual Evaluation report of the UK by FATF was published in December 2018.

4.4 Please provide information on how to obtain relevant anti-money laundering laws, regulations, administrative decrees and guidance from the Internet. Are the materials publicly available in English?

For useful links, please see below:

- POCA and the Regulations are available at: https://www.legislation.gov.uk/.
- The FCA provides information and guidance on its website: https://www.fca.org.uk/.
- The NCA publishes information on different types of risk, as well as guidance designed to assist firms with filing SARs. The NCA also publishes information and analysis relating to the volumes of SARs filed every year: https://www.nationalcrimeagency.gov.uk/.
- Guidance issued by the various supervisory authorities are publicly available on their respective websites.

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