

New UK AML Action Plan – The Increased Role of the Private Sector

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The UK Government has just published an [Action Plan](#) setting out extensive reform to the anti-money laundering (“**AML**”) and counter-financing of terrorism (“**CFT**”) regime and in particular the filing of Suspicious Activity Reports (“**SARs**”).

The Action Plan focuses on four priority areas:

1. A stronger partnership between the private sector and government agencies, which we discuss further below.
2. Enhancing law enforcement response, including developing new capabilities and new legal powers to gather intelligence, disrupt money launderers and terrorists, recover criminal proceeds, and protect the integrity of the UK's financial system. The Action Plan gives the example of a task force, led jointly by the National Crime Agency (“**NCA**”) and HM Revenue & Customs, to investigate all forms of illegality revealed by the data leak regarding the so-called “Panama Papers”.
3. Improving the effectiveness of the supervisory regime and considering options to ensure that a risk-based approach is fully embedded, rather than a focus on so-called “tick-box” compliance.
4. Increasing the international reach of law enforcement agencies and international information sharing to tackle money laundering and terrorist financing threats. The UK Government intends to show leadership via the Prime Minister's forthcoming Anti-Corruption Summit. The summit is intended to galvanise an international response and address issues including corporate secrecy, government transparency and the enforcement of international anti-corruption laws.

The Action Plan follows several previous developments in the AML and CFT regime:

- The launch of the Economic Crime Command of the NCA in 2013;
- The formation of a new partnership between law enforcement and the financial sector to create the Joint Money Laundering Intelligence Task Force (“**JMLIT**”). JMLIT was established to provide an environment in which the financial sector and law enforcement agencies could exchange and analyse information and intelligence to detect, prevent and disrupt money laundering and wider economic crime threats against the UK;
- The Small Business, Enterprise and Employment Act 2015, which included provisions designed to enhance corporate transparency in the UK;
- The first national risk assessment of money laundering and terrorist financing, which was published in October 2015 and was intended to identify, understand and assess the money laundering and terrorist financing risks faced by the UK; and

- The Fourth Money Laundering Directive, which will be transposed into UK law by June 2017 and will increase the UK's emphasis on a risk-based approach to AML.

In addition, Deferred Prosecution Agreements have been introduced into UK law and have been available to a designated prosecutor since February 2014 regarding specified offences, including the substantive money laundering offences under the Proceeds of Crime Act 2002 (“**POCA**”) and a breach of the Money Laundering Regulations 2007.

A Stronger Partnership between the Private Sector and Law Enforcement Agencies

The private sector has always been at the frontline of the AML and CFT regime. In particular, those in the regulated sector act as not only gatekeepers to the financial system, but also as whistleblowers. One of the cornerstones of the current regime is the sharing of information between the private sector and law enforcement via the SARs regime.

Those in the regulated sector have obligations to report knowledge or suspicion that another person is engaged in money laundering or to make a report when there are reasonable grounds to know or suspect that another person is engaged in money laundering. Consent can also be sought via a SAR, which will provide a statutory defence from a money laundering prosecution. The CFT regime has similar provisions.

The bar for making a SAR is low and is based on the concept of “suspicion.” Suspicion has been defined by the courts as “*a possibility, which is more than fanciful, that the relevant facts exist.*”¹ As a consequence, the private sector devotes a large amount of resource to dealing with low risk transactions and each year the number of SARs filed increases:

Year	Total SARs	Consent SARs
Oct 10 to Sept 11	247,601	13,662
Oct 11 to Sept 12	278,665	12,915
Oct 12 to Sept 13	316,527	14,103
Oct 13 to Sept 14	354,186	14,155

Both law enforcement and the private sector have become increasingly concerned about the effectiveness of the SARs regime. The Home Office review of the SARs regime has found that the most effective way for the UK to improve its response to the threat from money laundering and terrorist financing is through:

- Moving from a transaction focused regime to jointly identifying and tackling individuals, companies and others that pose the highest risk;
- Considering removing the consent regime and replacing it with an intelligence led approach supported by information sharing via JMLIT. This would include amendments to POCA, such as the removal of the defence provided by the consent regime. Further amendment would ensure that reporters who fulfill their legal and regulatory obligations would not be criminalised;
- Providing the NCA with a power to oblige reporters to provide further information on a SAR where there is a need to do so. This is a potentially significant expansion in the role of intelligence gathering by the private sector;
- Upgrading the UK Financial Intelligence Unit's capabilities, including an improvement in the analysis of SARs; and
- Considering legislation to create a legal safe harbour to allow the reporting sector to share information on AML and CFT risks. The Government plans to learn about the experiences of law enforcement agencies and banks regarding the similar powers provided for by the US PATRIOT Act. This is intended to allow firms to better understand the risks they face and to submit higher quality SARs as a result.

¹ *R v Da Silva* [2006] EWCA Crime 1654. This case related to the previous money laundering regime under the Criminal Justice Act 2988, but applies to POCA per *K Ltd v National Westminster Bank Plc* [2006] EWCA Civ 1039.

In tandem with changes to the reporting regime, JMLIT will allow the private and public sectors to continue to work together and develop a cohesive approach to AML and CFT issues.

Conclusion

The Action Plan outlines significant reforms to the AML regime and sets out a timeline which will have the actions concluded by October 2018. Firms can therefore expect to devote significant resources to implementing these reforms over the next few years. At the same time, firms will need to comply with the existing regime and the onerous burden it imposes

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