The UK Anti-Money Laundering Regime: the practical effects for business

John Binns and **Caroline Mair** discuss the key provisions of the UK Anti-Money Laundering regime, a regime which has serious and wide-ranging implications for business. The authors provide a snapshot of those provisions and some practical guidance on how businesses might wish to approach their anti-money laundering responsibilities.

The UK's money laundering legislation is complicated and far-reaching. Although its main impact is on the banks and others in the "regulated sector" of the UK itself, it has the potential to impact on any business in any sector, anywhere in the world. It is important therefore for businesses to be aware at least in broad terms of the legislative landscape and the pitfalls that may arise.

Key Provisions

The main statutes of which businesses need to be aware are the Financial Services and Markets Act 2000 (FSMA) and the Proceeds of Crime Act 2002 (POCA). Although it is POCA that defines the principal money laundering offences (as well as, for example, setting out regimes for confiscation and civil recovery of criminal assets), it is under FSMA that the Money Laundering Regulations 2007 (MLR) are made, which define the obligations of those in the "regulated sector" – originally comprising banks and financial institutions, but now including many others including accountants and (in some cases) solicitors.

The principal money laundering offences in sections 327 to 329 of POCA are very broadly worded and in essence prohibit doing anything with assets, including merely possessing them, where such assets are or represent the "proceeds of crime".

Assets include money and "pecuniary advantages". It should be noted that the offences are committed where the person dealing with the assets either knows or even merely suspects their criminal origin (which makes them "criminal property" for the purposes of POCA). Under a recent controversial Court of Appeal case, the UK courts decided they have universal jurisdiction to try any allegation of money laundering wherever and by whomever it is said to have been committed.

Later sections of POCA create offences specific to the regulated sector, which is also subject to requirements under MLR, for instance to perform "Anti Money Laundering" (AML), Customer Due Diligence (CDD) and "Know Your Customer" (KYC) procedures, especially where there are considered to be heightened risks including the involvement of "Politically Exposed Persons" (PEPs). The effect of this is that banks, accountants and others are obliged to research their customers and submit a suspicious activity report (SAR) to the National Crime Agency (NCA) where there is a "reasonable cause" for suspicion, or face criminal sanctions in default. Importantly, POCA also criminalises "tipping off" the subject of a SAR and prejudicing any investigation into them.

Potential Defences to Money Laundering Offences

There are also defences available in relation to all of the offences where the person submits a report to the authorities as soon as reasonably practicable and, if the report precedes the act in relation to the asset, he obtains consent for it. POCA's "consent regime" sets out a timetable by which, when a SAR is submitted, the NCA has an "initial notice period" of seven working days to refuse consent, followed by a "moratorium period"

of 31 calendar days after which (absent action by the authorities to freeze the assets) consent can be assumed. The NCA has been careful to point out however that submitting a SAR should not be used as a substitute for taking a risk-based approach in assessing the money laundering risks facing a business; perhaps this says something about the workload of the NCA given the implication that those submitting a SAR are not making well-balanced decisions.

What are the implications of the Money Laundering regime for businesses?

The implications of this regime for a business that, for instance, discovers a risk that an employee or agent has committed a bribery or fraud offence, are potentially both complex and serious. If, say, a bribe has been paid to obtain an advantage for the business, or if its accounts have been used as a conduit for a fraud, then the business may in effect be "in possession" of criminal property if and from the moment that it suspects that this is the case. Depending on the answers to these questions, it may be necessary, prudent or even advantageous to submit a SAR to the NCA, and seek consent to deal with the assets.

Meanwhile, any business that deals with banks or others in the UK's regulated sector should also be aware of the risk that, quite apart from the above, a SAR might be submitted in respect of their own assets, most typically in respect of their bank accounts. Increasingly, the UK's banks, being understandably risk-averse in this sector, will decide to close or block accounts at the slightest hint of any matter that could give rise to a *"*reasonable cause for suspicion" – which they would doubtless consider a very low threshold – and because of the provisions on "tipping off", adopt a firm policy of refusing to discuss these matters with their customers. Often the first indication that a business will have of being the subject of any such attention is an unexplained block on its accounts, or a failure by the bank to carry out a transaction.

In both scenarios, it will often be prudent for a business against whom a SAR has been submitted to take proactive steps to contact (directly and/or via the bank or other reporter) the NCA and any investigators, offering cooperation, while meanwhile conducting its own enquiries into the likely cause of the difficulty.

An effective set of representations within the "initial notice period", including explanation of the business rationale of particular transactions potentially giving rise to suspicion, may cut matters short and mitigate the potential damage to the business: failing that, the accounts may be blocked for the remainder of the "moratorium period" or even longer.

The future of the UK Anti-Money Laundering regime

Forthcoming changes to the legislation will make matters more difficult for businesses, including a facility for the authorities to extend the "moratorium period" a further six times, and measures under the latest (Fourth) EU AML Directive to tighten up AML procedures, including for example a broader definition of PEPs. Legislators, of course, would argue that these measures are necessary to protect the public from the effects of acquisitive crime. Though few would argue against that aim, the practical impact is a set of potential criminal liabilities of which *all* businesses need to be aware and against which they must seek to protect themselves.

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