EVERSHEDS SUTHERLAND

Horizon scanner

Financial crime update

RISK RATING

Potential impact

Legal Risk	What's next	Supporting Information (hyperlinks)
Corporate criminal offence of failure to prevent the facilitation of tax evasion The Criminal Finances Act 2017 (the "2017 Act") amends the Proceeds of Crime Act 2002 to introduce two new strict liability corporate offences; 1 Failure to prevent persons associated with the corporate from facilitating UK tax evasion; and 2 failure to prevent persons associated with the corporate from facilitating foreign tax evasion. The new offences will take effect on 30 September 2017. The 2017 Act sets out a defence to the new offences – namely that the corporate body had "reasonable procedures" in place to prevent the facilitation offences. HMRC has issued guidance in respect of the new offences and the concept of "reasonable procedures". As a minimum, every business must be able to demonstrate that it has undertaken a risk assessment.	The 2017 Act comes into effect on 30 September 2017 and all businesses must be able to demonstrate that they have reasonable prevention procedures in place.	Criminal Finances Act 2017 Eversheds Sutherland comment Tackling tax evasion: Government guidance for the corporate offence of failure to prevent the criminal facilitation of tax evasion_
Criminal Finances Act 2017 (the "2017 Act") – Suspicious activity reports ("SARs") and AML The 2017 Act received Royal Assent on 27 June 2017, representing a significant strengthening of the government's power to tackle money-laundering, with changes being introduced across the board: from joined-up reporting, to information sharing in the regulated sector, to increased time to investigate suspicious activity and the imposition of unexplained wealth orders ("UWOs") which require respondents to explain how they obtained certain property. The 2017 Act extends the moratorium period for SAR reporting, enabling the court to extend the period for an additional 31 days. Multiple applications for extensions can be made, however the period cannot total more than 186 days beginning after the end of the initial 31 day period. These amendments will intensify the challenges faced by institutions that are regulated in managing customer expectations and the risk of "tipping off". The 2017 Act also enables those in regulated sectors to share information in respect of SARs, in certain prescribed circumstances.	The 2017 Act is partially in force and we expect it to take further effect by 30 September 2017.	Criminal Finances Act 2017 Eversheds Sutherland comment

Immediate impact

Short term impact

Medium term impact

Legal Risk	What's next	Supporting Information (hyperlinks)
Restrictive measures against Russia in respect of Crimea and Sevastopol Since March 2014, the EU has progressively imposed restrictive measures against Russia in response to the illegal annexation of Crimea and Sevastopol. These restrictive measures include (i) an import ban on goods from Crimea and Sevastopol, (ii) restrictions on trade and investment related to certain economic sectors and infrastructure projects, (iii) a prohibition to supply tourism services in Crimea or Sevastopol, and (iv) an export ban for certain goods and technologies. The measures apply to EU persons and EU based companies. They are limited to the territory of Crimea and Sevastopol.	On 19 June 2017, the EU Council extended the restrictive measures by another year, until 23 June 2018.	
Sectoral and financial sanctions against Russia EU sectoral sanctions against Russia have been in place now since July 2014 and have been amended and extended on a number of occasions. EU prohibitions targeting specific sectors of the Russian economy have now been extended until 31 January 2018. Asset freezes also continue to be extended.	On 28 June 2017, the EU extended its sectoral sanctions against Russia until 31 January 2018. Asset freezes relating to the misappropriation of Ukrainian State funds have been extended until 6 March 2018.	
EU Council Directive 2016/2258 as regards access to anti-money laundering ("AML") information by tax authorities (2016/0209) On 6 December 2016, the EU Council adopted a directive which grants access to tax authorities to information held by authorities responsible for the prevention of money laundering. The Directive requires Member States to provide tax authorities access to the "mechanisms, procedures, documents and information" relating to CDD and beneficial ownership.	Members States have to transpose the Directive into national law by 31 December 2017 and apply those measures from 1 January 2018.	EU Council Directive 2016/2258
Amendment to the US OFAC Sudanese Sanctions Regulations In conjunction with a new Executive Order ("EO") signed on 13 January 2017, the OFAC issued a General licence, which authorises all transactions prohibited by the Sudanese Sanctions Regulations 31 C.F.R, part 538 ("SSR"). The General Licence authorises all transactions prohibited by the SSR and two previous EOs (EO 13067 & 13412) and unblocks previously blocked property in which the Government of Sudan has an interest. Furthermore, the licence allows U.S persons to facilitate transactions between Sudan and third countries, to the extent these were previously prohibited by the SSR. The General Licence does not, however, impact Sudanese individuals/ entities which remain blocked pursuant to EO 13400.	The new E.O. provided for the permanent revocation of the sanctions provisions in E.O.s 13067 and 13412 on 12 July 2017 if the Government of Sudan sustains the positive actions it has taken over the past 6 months. However, on 11 July 2017, a further EO was executed to extend the 12 July deadline for permanent revocation of the sanctions provisions for another 3 months to 12 October 2017.	General licence text Eversheds Sutherland comment

Immediate impact

Short term impact

Medium term impact

Legal Risk	What's next	Supporting Information (hyperlinks)
Second National Risk Assessment of Money Laundering and Terrorist Financing The government has previously stated, within its AML Action Plan, that preparation for the Financial Action Task Force ("FATF") UK mutual evaluation will involve a second national risk assessment.	It is expected that a UK risk assessment will take place prior to the FATF mutual evaluation taking place in 2018.	2017 National Risk Assessment of Money Laundering and Terrorist Financing Action plan for anti-money laundering and counter-terrorist finance
The Financial Action Task Force (FATF) UK mutual evaluation – 2018 FATF conducts reviews of each member on an on-going basis to assess financial crime prevention measures against the FATF recommendations.	It is expected that a further UK evaluation will take place in 2018.	
Regulations regarding the creation of an Office for Professional Body Anti-Money Laundering Supervision ("OPBAS") In March 2017 the Government announced that a new OPBAS would be created within the FCA. The Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017 were issued in draft on 20 July 2017 and were subject to consultation, which has now closed. The proposed regulations are intended to supplement the MLR 2017 and give powers to the FCA to supervise professional body AML supervisors and ensure they meet their AML obligations.	It is not yet known when the new Regulations will come into effect. We recommend monitoring the position.	Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017

Legal Risk	What's next	Supporting Information (hyperlinks)
Consultation regarding an Office for Professional Body Anti-Money Laundering Supervision: a sourcebook for professional body supervisors Following on from the announced creation of the OPBAS and the draft Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017, the FCA has opened a consultation on its proposed text for a specialist sourcebook for professional body supervisors that sets out expectations in relation to anti-money laundering supervision.	The FCA consultation is due to close on 23 October 2017.	FCA guidance consultation
Consultation on proposals for domestic sanctions legislations following Brexit The majority of current sanctions legislation derives from EU sanctions and as such, post Brexit, significant changes are needed to the UK's current sanctions legislative framework. The Office of Financial Sanctions Implementation ("OFSI") recently launched a public consultation on its proposals for domestic sanctions legislation to enable the UK to meet its UN obligations to implement UN sanctions and to impose its own domestic legislation following the UK's withdrawal from the EU. OFSI's consultation closed on 23 June 2017 and we await the outcome. At present there are no changes and all regulated institutions should continue to comply with both UN and EU sanctions.	The path for Brexit is not yet clear and at present there are no changes and all regulated institutions should continue to comply with both UN and EU sanctions.	OFSI consultation Evershedulls Sutherland comment

Immediate impact

Short term impact

Medium term impact

Legal Risk	What's next	Supporting Information (hyperlinks)
Proposed 5th Money Laundering Directive ("5th MLD") In July 2016, the European Commission proposed a further directive to amend the 4th MLD and further enhance the AML framework. This was followed by a presidency compromise text (the "Text") which proposed a 5th MLD, which includes scope for Member States to apply discretion to the application of EDD to domestic PEPs. On 9 August 2017, the Commission published an inception impact assessment on widening access to centralised bank account registries to be established under the 5th MLD.	The 5th MLD was due to be discussed at the European Parliament plenary session in March 2017, however, it was removed from the agenda. It is currently unclear when the Parliament will consider the 5th MLD. Once the proposed Directive has been published in the Official Journal of the EU, Member States will have 12 months in order to transpose it into national law.	Presidency compromise text European Parliament report EDPS opinion
EU Proposal for a Directive on countering money laundering by criminal law The European Commission has proposed a Directive requiring Member States to criminalise money laundering. Whilst many Member States have already criminalised money laundering, the Directive proposes to harmonise money laundering offences and sanctions as currently there are differences across the EU. The Directive will set out minimum rules concerning the definition of criminal offences and sanctions.	On 8 June 2017, the European Council adopted its position on the proposed Directive. The Council and the European Parliament will enter into negotiations on the final text as soon as the latter has decided on its position.	EU Proposal for a Directive on countering money laundering by criminal law

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