EVERSHEDS SUTHERLAND

Horizon scanner
Financial crime update

RISK RATING

Potential impact

Legal Risk	When	What's next	Supporting Information
The Fourth Money Laundering Directive ("4th MLD") and new UK Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("MLR 2017") The current Money Laundering Regulations 2007 will be repealed and replaced by the new MLR 2017 on 26 June 2017. The MLR 2017 gives effect to the EU 4th MLD. The final regulations were published on 23 June 2017. The new MLR 2017 make a number of substantial changes in areas including: – **Risk assessment** – all firms will be required to conduct a firm-wide risk assessment for anti-money laundering ("AML") purposes. – Simplified due diligence ("SDD") - firms will no longer be able to automatically apply SDD but will instead be required to assess whether a business relationship or transaction(s) presents a low degree of risk of money laundering or terrorist financing, taking into account a number of risk factors. Only where the risk is assessed as low can SDD be implemented. Applying SDD under the new MLR 2017 means that customer due diligence ("CDD") requirements must continue to be applied but that the extent of these measures can be adjusted, as opposed to CDD not being applied at all. – **Enhanced Due Diligence** ("EDD") – Firms will now be required to conduct EDD and enhanced monitoring in relation to certain relationships, for example: correspondent relationships, politically exposed persons ("PEPs") or potential PEPs, any case where a transaction is of a complex nature or there is a unusual pattern of transactions, where the customer is established in a high-risk third party country and in any other case which by its nature can present a higher risk of money laundering and terrorist financing. – Other changes being introduced will impact internal control requirements, beneficial ownership and data protection requirements.	26 June 2017	The new MLR 2017 are required to take effect on 26 June 2017.	MLR 2017 The Fourth Money Laundering Directive

Immediate impact

Short term impact

Medium term impact

Legal Risk	When	What's next	Supporting Information
Amendments to the Joint Money Laundering Steering Group ("JMLSG") guidance In line with the anticipated MLR 2017, the JMLSG has revised its risk-based AML guidance. Regulated institutions should take note of the amended guidance and how it might potentially impact their business. Sector specific guidance for certain regulated entities is also expected from other AML supervisors, such as HMRC, in due course.	26 June 2017	The MLR 20117 and JMLSG guidance will take effect on 26 June 2017.	JMLSG revised guidance Part 1 JMLSG revised guidance parts II and III
Section 30 Bank of England and Financial Services Act 2016 ("BEFS") The 4th MLD extends the definition of PEPs to include domestic PEPs. Section 30 of the of BEFS places an obligation on the FCA to issue guidance to regulated entities on the requirement to take a proportional and risk based approach to conducting transactions with each category of PEP and must specify categories of persons which are to be included and excluded within any definition of a PEP The FCA has issued draft guidance and the consultation in respect of this has closed. It is expected that a complaints procedure will be established for the treatment of individuals by regulated entities, where they are treated as a PEP even though they were not in fact a PEP and/or, where they are refused a business relationship solely on the basis that they are a PEP. Compensation may be awarded. Regulated entities should ensure their policies and procedures are aligned with the new guidance when it is finally published.	26 June 2017	The FCA consultation closed on 18 April 2017 and the final guidance is expected to be published before 26 June 2017. The guidance should be read in conjunction the JMLSG guidance	The FCA draft guidance JMLSG revised guidance parts II and III

Immediate impact

Short term impact

Medium term impact

Legal Risk	When	What's next	Supporting Information
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.	12 July 2017	The new E.O. provides 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.	General licence text Eversheds Sutherland comment
FCA consultation on proposed changes to enforcement powers under the MLR 2017. The FCA has proposed that its enforcement policies and guidelines largely mirror its current approach under the existing AML regime. The FCA's consultation paper sets out some consequential amendments to its Decision Procedure and Enforcement Guide as a result of changes introduced by MLR 2017.	31 July 2017	The FCA consultation is due to close on 7 July 2017 with the revised rules being published by end of July	FCA Consultation Paper CP17/13
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. The financial sanctions include asset freezes and travel bans which have been extended until 15 September 2017, as well as prohibitions targeting specific Russian sectors which have been extended until 31 July 2017	31 July 2017	Prohibitions targeting specific Russian sectors have been extended until 31 July 2017. Asset freezes and travel bans have recently been extended by the EU until 15 September 2017	

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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".	1 Sept 2017	The 2017 Act is partially in force and we expect it to take further effect by September 2017.	Criminal Finances Act 2017 Eversheds Sutherland comment
Corporate criminal offence of failure to prevent the facilitation of tax evasion The 2017 Act amends the Proceeds of Crime Act 2002 to introduce two new 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 are expected to take effect in September 2017. The 2017 Act does however pave way for a potential defence to the new offences – namely that the corporate body had "reasonable procedures" in place to prevent the facilitation offences. The 2017 Act requires the Chancellor of the Exchequer to prepare and publish guidance on such "reasonable procedures" and to this end draft guidance was issued by HMRC in April 2016. The final guidance is awaited and we understand that the British Bankers' Association is also working on sector specific guidance for the financial services sector which it hopes will receive approval from HMRC.	1 Sept 2017	The corporate criminal offences come into effect from 1 September 2017	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_

Legal Risk	When	What's next	Supporting Information
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 2 February 2017, the European Data Protection Supervisor ("EDPS") published an opinion and analysed the impact of the proposals from a data protection perspective. On 10 March 2017, the European Parliament published a report on the proposed 5MLD along with a draft Parliament resolution.	Unknown	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 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. The position should be further reviewed once the 4th MLD comes into effect.	Presidency compromise text European Parliament report EDPS opinion
Second National Risk Assessment of Money Laundering and Terrorist Financing The government has 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.	1 Dec 2017	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

Immediate impact   Short term impact   Medium term impact

Legal Risk	When	What's next	Supporting Information
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.	1 Dec 2017	The proposal for a Directive will be transmitted to the European Parliament and Council for adoption. Once adopted, Members States will have two years to transpose the provisions into national law. We recommend reviewing the position again December 2017.	EU Proposal for a Directive on countering money laundering by criminal law
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.	1 Jan 2018	It is expected that a further UK evaluation will take place in 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.	1 Jan 2018	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

Immediate impact

Short term impact

Medium term impact

Legal Risk	When	What's next	Supporting Information
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.	1 June 2018	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. We recommend reviewing the position in 12 months.	Eversheds Sutherland comment OFSI consultation

Immediate impact

Short term impact

Medium term impact

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