

Horizon scanner

Financial Crime and Cyber-security



RISK RATING

Potential impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<p>The Financial Action Task Force (FATF) UK mutual evaluation – 2018</p> <p>FATF conducts reviews of each member on an on-going basis to assess financial crime prevention measures against the FATF recommendations. The aim of the review is to assess the UK's AML regime and to identify any areas of improvement.</p>	<p>February/ March 2018</p>	<p>The UK onsite visit is anticipated to take place in February/March 2018 with a plenary discussion anticipated in October 2018.</p>	
<p>Consultation on transposition of cyber-security Directive</p> <p>On 8 August 2017, the Government published a consultation on the transposition of the Security of Network and Information Systems Directive EU 2016/1148 into UK law. The consultation closed on 30 September 2017 and the Government is currently analysing the feedback.</p> <p>The consultation covered: the essential services that need to be covered by the legislation; the penalties; the competent authorities to regulate and audit specific sectors; the security measures proposed to be imposed; timelines for incident reporting and how this affects digital service providers.</p> <p>The Directive aims to boost the overall level of network and information system security in the EU by ensuring that Member States have in place a national framework to support and promote the security of network and information systems. Businesses in certain vital sectors that are identified by Member States as operators of essential services, will have specific compliance and incident reporting obligations imposed on them.</p>	<p>9 May 2018</p>	<p>The Directive needs to be transposed into UK law by 9 May 2018.</p>	<p>Consultation European Commission Press Release</p>



Immediate impact



Short term impact



Medium term impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<p>Restrictive Measures Against Russia in response to the illegal annexation of Crimea and Sevastopol</p> <p>Since March 2014, the EU has progressively imposed restrictive measures against Russia in response to the illegal annexation of Crimea and Sevastopol.</p> <p>These restrictive measures include an import ban on goods from Crimea and Sevastopol; restrictions on trade and investment related to certain economic sectors and infrastructure projects, a prohibition to supply tourism services in Crimea or Sevastopol; and an export ban for certain goods and technologies.</p> <p>The measures apply to EU persons and EU based companies. They are limited to the territory of Crimea and Sevastopol.</p>	<p>Already in force</p>	<p>On 19 June 2017, the EU Council extended the restrictive measures by another year until 23 June 2018.</p>	<p>EU press release</p>
<p>Sectoral and Financial Sanctions Against Russia</p> <p>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 relating to the misappropriation of Ukrainian State funds have been extended until 6 March 2018.</p>	<p>Already in force</p>	<p>It is likely the sanctions will continue to be extended and we expect a further extension of the sectoral sanctions shortly.</p>	<p>EU Council press release</p>



Immediate impact



Short term impact



Medium term impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<p>Regulations regarding the creation of an Office for Professional body Anti-money Laundering Supervision ("OPBAS")</p> <p>In March 2017 the Government announced that a new OPBAS would be created within the FCA. The aim of the OPBAS is to improve standards of AML supervision and ensure that supervisors and law enforcement work effectively together.</p> <p>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 Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and give powers to the FCA to supervise professional body AML supervisors and ensure they meet their AML obligations.</p> <p>The FCA expects OPBAS to be up and running by the beginning of 2018.</p>	<p>Watching brief</p>	<p>It is not yet known when the new Regulations will come into effect. We recommend monitoring the position.</p>	<p>Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017</p>
<p>Consultation regarding an OPBAS: a sourcebook for professional body supervisors</p> <p>The FCA is consulting on proposed text for a specialist sourcebook for professional body supervisors, that sets out expectations in relation to anti-money laundering supervision.</p> <p>Following on from the announced creation of the OPBAS and the draft Oversight of Professional Body Anti-Money Laundering Supervision Regulations 2017, the FCA 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 consultation closed on 23 October 2017.</p>	<p>Watching brief</p>	<p>The FCA consultation closed on 23 October 2017. We are awaiting comments from the FCA. We recommend monitoring the position.</p>	<p>FCA guidance consultation</p>



Immediate impact



Short term impact



Medium term impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<p>Asset recovery action plan</p> <p>In 2016, the Home Office committed to publish an asset recovery action plan in response to a Public Accounts Committee. The asset recovery plan will set out how the UK is responding to the challenges involved in improving the recovery of the proceeds of crime. While the UK's performance in asset recovery has been broadly stable, the government strives to be more ambitious in tackling criminal finances and the action plan will outline a new approach to asset recovery. In particular, the plan will seek to develop more effective ways of calculating the value of the wider benefits of financial investigation and make this information available to the public.</p>	Watching brief	The asset recovery action plan is due to be published later this year. We recommend monitoring the position.	Home Office Asset Recovery Statistics - Response and Fact Sheet
<p>OFAC issues general licence regarding sanctions against Belarus</p> <p>On 24 October 2017, OFAC issued general licence 2D which authorises certain transactions with certain entities which were previously designated pursuant to Executive Order 13405.</p> <p>The general licence authorises transactions with certain designated entities and will remain in effect until 30 April 2018. The licence does not authorise the unblocking of assets.</p>	Immediate	The general licence remains in effect until 30 April 2018.	
<p>National Economic Crime Centre</p> <p>As part of the Government's anti-corruption strategy, the UK is to create a new National Economic Crime Centre (NECC) based within the National Crime Agency (NCA). The NECC will task and coordinate the national response to economic crime, backed by greater intelligence and analytical capabilities. It will draw on expertise from across government, law enforcement and criminal justice agencies, as well as new resources provided by the private sector. They will share information to develop understanding of the threats and plan a coordinated response to protect the public and UK businesses. The NECC will allow the NCA to directly task the SFO to investigate the worst offenders. The Government has also renewed its commitment to introduce an overseas companies beneficial ownership register, which will mean that overseas companies that own or buy property in the UK, or participate in central government procurement will be required to provide details of their ultimate owners.</p>	11 December 2017	The Home Secretary announced the creation of the NECC on 11 December 2017. It is not yet clear when this will be created, but is a part of the Government's anti-corruption strategy for 2017-2022 which was published on 11 December 2017	Government Press release National Crime Agency



Immediate impact



Short term impact



Medium term impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<p>Sanctions and Anti-Money Laundering Bill</p> <p>The Government has proposed a Sanctions and Anti-Money Laundering Bill in anticipation of Brexit. The Bill aims to ensure that when the UK leaves the EU, the government can continue to impose, update and lift sanctions and AML regimes.</p> <p>The Sanctions and Anti-Money Laundering Bill will enable the UK government to impose sanctions/AML legislation where appropriate for the purposes of (i) complying with United Nations obligations or other international obligations, (ii) furthering the prevention of terrorism or for the purposes of national security or international peace and security or (iii) furthering foreign policy objectives, to make provision for the purposes of the detection, investigation and prevention of money laundering and terrorist financing and (iv) implementing Standards published by the Financial Action Task Force relating to combating threats to the integrity of the international financial system, and (v) for connected purposes.</p>	<p>Watching brief</p>	<p>The Bill is currently at the Committee Stage in the House of Lords. A number of amendments to the draft Bill have been proposed and are being discussed.</p> <p>The Bill will need to gain Royal Assent before "Brexit day" to ensure the UK can continue to comply with international sanctions and AML obligations and standards.</p>	<p>Parliament timetable</p> <p>The draft Bill</p>
<p>EU Proposal for a Directive on countering money laundering by criminal law</p> <p>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.</p>	<p>Watching brief</p>	<p>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. We recommend reviewing the position again in January 2018.</p>	<p>EU Proposal for a Directive on countering money laundering by criminal law</p>



Immediate impact



Short term impact



Medium term impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<p>Criminal Finances Act 2017 (the "2017 Act")</p> <p>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 which require respondents to explain how they obtained certain property.</p> <p>The 2017 Act has also already brought into effect new criminal offences associated with the facilitation of tax evasion.</p>	Watching brief	The Criminal Finances Act received Royal Assent on 27 April 2017. It is partially in force and we await the implementation of the remaining provisions.	<p>Criminal Finances Act</p> <p>Eversheds Sutherland comment</p>
<p>Proposed 5th Money Laundering Directive ("5th MLD")</p> <p>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 which proposed a new 5th MLD, which includes scope for Member States to apply discretion to the application of enhanced due diligence to domestic Politically Exposed Persons and aims to tackle terrorist financing risks associated with virtual currencies and pre-paid cards. A number of proposals to amend the text have been put forward and are being considered. On 9 August 2017, the Commission published an inception impact assessment on widening access to centralised bank account registries to be established under MLD5.</p>	Watching brief	The 5MLD was due to be discussed at the European Parliament plenary session in October 2017, however, no details regarding this are currently available. Once the proposed 5 th MLD has been published in the Official Journal of the EU, Member States will have 12 months in order to transpose it into national law. We recommend that relevant teams are aware of this and monitor progress.	<p>European Parliament briefing</p> <p>Inception Impact Assessment</p>



Immediate impact



Short term impact



Medium term impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<p>Proposal for EU Regulation on framework for the free flow of non-personal data in the EU</p> <p>The European Commission has issued a proposal for a Regulation on a framework for the free flow of non-personal data in the EU. The purpose of the Regulation is to unlock the potential market in data in order to achieve a more competitive and integrated market for data storage and processing services and activities.</p>	Watching brief	We await further updates in regard of the proposal.	Proposal
<p>Data Protection Bill</p> <p>The draft Data Protection Bill, which will replace the Data Protection Act 1998, has been published. When enacted, the Bill will supplement the GDPR (which comes into force on 25 May 2018) while the UK remains in the EU and is intended to be read alongside the GDPR. Upon the UK leaving the EU, the Data Protection Bill (which will have transitioned to the Data Protection Act 2018 by that point) will be primary legislation governing data protection of UK businesses and UK data subjects. It is important to note that the Data Protection Bill could not override the GDPR in respect of its applicability to the personal data of EU data subjects or of UK businesses targeting or dealing with EU data subjects.</p> <p>The Bill will apply a regime that is broadly equivalent to GDPR to certain types of processing to which the GDPR does not apply (eg activities which are outside the scope of EU law). It will also implement GDPR derogations and provide clarity on definitions used in the GDPR in a UK context.</p> <p>The Bill will also implement the Law Enforcement Directive and make provision for processing of personal data by competent authorities for law enforcement purposes.</p> <p>The Bill also contains provisions relating to processing of personal data by intelligence services; setting out the scope of the Information Commissioner's remit; setting out the data protection offences and how data protection law is to be enforced, including the power to levy fines.</p>	Watching Brief – significance realised upon Brexit	<p>Following Brexit the GDPR will be transposed into domestic law (in accordance with the provisions of the final form European Union (Withdrawal) Bill) and will apply alongside the Data Protection Bill until any replacement or consolidating legislation is passed. The intention is that the UK and EU data protection regimes will remain aligned post Brexit, with the aim of ensuring that the UK is awarded adequacy status so that data flows can continue uninterrupted.</p> <p>The Committee had its 6th sitting in the House of Lords on 22 November and the report stage is scheduled for 11 December. It is anticipated that the text of the Bill will change as it moves through the legislative process.</p>	Data Protection Bill Data Protection Bill before Parliament



Immediate impact



Short term impact



Medium term impact



Legal Issue/Risk	When?	What's next?	Supporting Information (hyperlinks)
<p>EU proposal for new EU wide cyber-security measures</p> <p>In September 2017, the EU Commission proposed a set of measures to enhance cyber-security in the EU. This includes a proposed Regulation, a European Cyber-security Research and Competence Centre, a blueprint for how Europe and Member States can respond quickly, operationally and in unison when a large-scale cyber-attack strikes, more solidarity, stronger cyber defence capabilities and enhanced international cooperation.</p> <p>The proposed Regulation sets out:</p> <ol style="list-style-type: none"> 1. the objectives, tasks and organisational aspects of the European Agency for Network and Information Security ("ENISA"), which will include assisting Member States in dealing with cyber-attacks and helping implement the Security of Network and Information Systems Directive. ENISA was set up in 2004 but its current mandate only lasts until 2020. The Regulation would give it a permanent mandate; and 2. the framework for establishment of an EU wide cyber-security certification scheme to ensure that ICT products and services are cyber secure. <p>In addition, the Commission also proposes a Directive to combat fraud and the counterfeiting of non-cash means of payment, by expanding the scope of offences related to information systems to all payment transactions, including those made through virtual currencies.</p>	<p>Watching brief</p>	<p>Various impact assessments have been published and the Commission's consultation ended on 6 December 2017. We await further information on the development of these proposals.</p>	<p>Proposal</p> <p>European Commission Press Release</p>



Immediate impact



Short term impact



Medium term impact



Contacts



Zia Ullah
Partner, UK

T: +44 16 1831 8454
ziaullah@eversheds-sutherland.com



Victoria Turner
Senior Associate, UK

T: +44 16 1831 8718
victoriaturner@eversheds-sutherland.com



Neill Blundell
Partner, UK

T: +44 20 7919 4533
neillblundell@eversheds-sutherland.com



David Cook
Senior Associate, UK

T: +44 161 831 8144
davidcook@eversheds-sutherland.com



Emma Gordon
Partner, UK

T: +44 20 7919 4931
emmagordon@eversheds-sutherland.com

eversheds-sutherland.com/financialinstitutions

This document is intended as a general overview and discussion of the subjects dealt with. The information provided here was accurate as of the day it was created; however, the law may have changed since that date. This information is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. The authors are not responsible for any actions taken or not taken on the basis of this publication. Where references or links are made to external publications or websites, the views expressed are those of the authors of those publications or websites which are not necessarily those of the authors of this document, who accept no responsibility for the contents or accuracy of those publications or websites.

eversheds-sutherland.com

© Eversheds Sutherland 2017. All rights reserved.
Eversheds Sutherland (International) LLP is part of a global legal practice, operating through various separate and distinct legal entities, under Eversheds Sutherland. For a full description of the structure and a list of offices, please visit www.eversheds-sutherland.com.
DTUK001311_12/17