

SARS – CRITERIA AND IMPLICATIONS


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Today's talk


- Suspicious Activity Reports;
- The importance of following the rules;
- The Fourth Money Laundering Directive (MLD4)
 - How the MLD4 is here to help;
 - New elements in the MLD4; and

Some tips to reduce money-laundering



Money makes the world go round

- Scale - An estimated US\$1.6 trillion laundered in 2009;
- Serious and organised crime estimated at US\$30bn per annum;
- Terrorists use the same channels – money to recruit, to arm, to kill;
- Main types:
 - Cash based
 - High End;
 - Others.



The principal offences

The principal offences are:

- 1. Conversion or Concealing property,;
 - 2. Arranging;
 - 3. Acquisition, use or possession
- Facilitation of above offences
- Tipping off



Suspicious Activity Report

- 1. Stop acting on the transaction (although not always possible);
- 2. Report your suspicion;
- 3. Do not "tip-off"
- 4. Defences



The importance of following the rules...

Case Study 1

- 1. Company X is accused of tax evasion.
- 2. Millions of dollars are funnelled through banks on various high end spending
- 3. The spending is by associates of PEPs.



The importance of following the rules...

Case Study 2

1. Bank Y has a due diligence process.
2. One account shows that a client acquired their money from their father.
3. It is alleged that the father has links to organised crime, money laundering & murder.
4. Bank Y has no information to show how it assessed and mitigated any risks.



The importance of following the rules...

Case Study 3

1. Bank Z strips references to “suspicious territories” to transfer money.
2. Bank Z’s employees have raised concerns.
3. However, the compliance department seems less concerned.
4. Bank Z has formed shell companies and re-routed payments through multiple banks.



The importance of following the rules...



- 2003- Money laundering fines= \$2.7 million.
- 2012- Money laundering fines= \$1.1 billion.



The Fourth Money Laundering Directive (MLD4)

- The MLD4 amends and replaces the MLD3 and the MLD3 Implementing Directive.

- Implements FATF revised recommendations

- States have approximately two years to bring into force the laws necessary to comply with MLD4.



MLD4 is here to help

The 6 keys areas:

- Chapter 1- General provisions

- Chapter 2- Customer due diligence

- Chapter 3- Beneficial ownership information

- Chapter 4- Reporting obligations

- Chapter 5- Data protection and record keeping

- Chapter 6- Policies, procedures and supervision



New elements in the MLD4

The key differences are:

1. Tax crimes are now predicate offences;
2. A new risk based approach;
3. Enhanced due diligence for a Politically Exposed Person (PEPs);
4. A public register of beneficial ownership; and
5. Harmonisation of the sanctions.



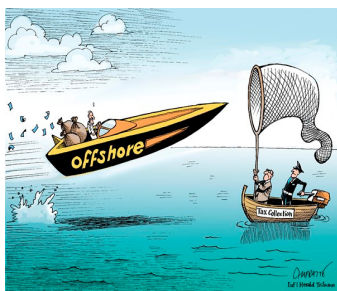
A new risk based approach

- Firms must carry out their own assessments of the money laundering and terrorist financing risks they face.
- Firms will be able to assess transactions based on specific factors.
- Firms can then identify whether simplified or enhanced due diligence is appropriate.



Tax crimes

- Tax crimes are now included under the definition of "criminal activity".
- So tax evasion may now lead to a money laundering offence.



Customer Due Diligence

- Identify the customer and verify;
- Identify the Ultimate Beneficial Owner;
- Understand purpose and nature;
- Ongoing due diligence



Enhanced due diligence (EDD) for a Politically Exposed Person (PEPs)

- MLD4 extends the scope of the PEPs covered under the previous MLD3.
- MLD4 makes no reference to “domestic” and “foreign” PEPs.
- So enhanced due diligence applies to all PEPs regardless of location.



Politically Exposed Persons (PEPs)



Which jurisdictions to watch out for

- UK National Risk Assessment
proceeds of UK crimes were laundered in these jurisdictions the most :
- UAE, Pakistan, Switzerland, Spain, Liechtenstein, Hong Kong, Cyprus, BVI, Isle of Man, Nigeria;



London is the Capital

- £23-57 billion laundered through the UK each year.
- “We assess that hundreds of billions of US dollars of criminal money almost certainly continue to be laundered through UK banks, including their subsidiaries, each year.”
- Despite UK’s role in developing international standards on money laundering, it is a “strategic threat to the UK’s economy and reputation”.



For drugs

- Organised crime;
- the same money-laundering networks used by organised crime are being used by terrorists as well.
- NCA

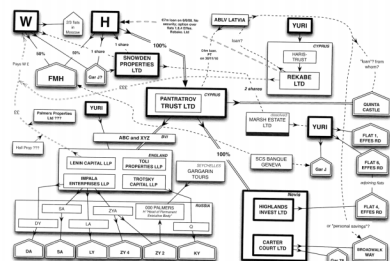


A public register of beneficial ownership

- A new central register of ultimate "beneficial" owners of corporate and other legal entities, as well as trusts.
- In some cases, senior managing officials will be the deemed beneficial owner.
- BUT keeping the register accurate could increase administrative burdens on firms.



A simple corporate structure...



Sanctions

New sanctions for breaches of the MLD4

include:

- Withdrawal/suspension of a firm's authorisation.
- A temporary ban against any person discharging managerial responsibilities.
- Maximum fines of EUR5 million or 10% of the total annual turnover.



OECD Common Reporting Standard (CRS)

The four main elements of the CRS are:

1. It affects financial institutions;
2. Reportable Accounts;
3. Reportable Income; and
4. Robust due diligence procedures



Implementation of the CRS

- 44 countries (“the Early Adopters”) will implement the CRS by 31 December 2015.
- 13 other countries have endorsed their support for implementation.



What to think of next

- Is there a top to bottom culture of compliance?
- Are you adopting a risk based approach?
- Is CDD a tick box exercise or a risk mitigation tool?
- Do staff know what risk factors to look for, what to report and to whom to report?
- What monitoring systems are in place?



Transparency

- *The next Panama?*
- *Sunlight is the best of disinfectants*



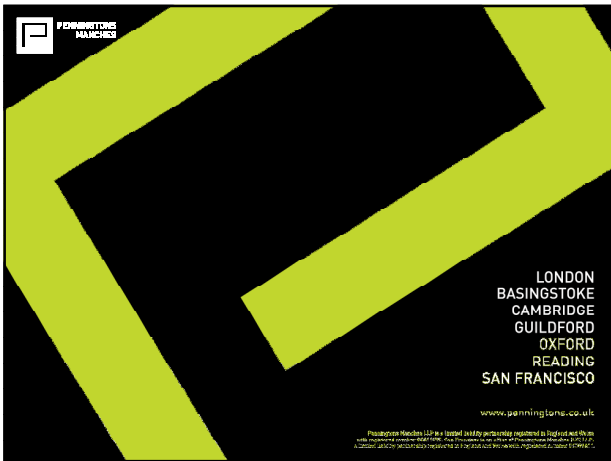

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