GIR KNOW HOW ANTI-MONEY LAUNDERING

United Kingdom - England & Wales

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Money laundering

1. What laws in your jurisdiction prohibit money laundering?

In the UK, the main laws prohibiting substantive money laundering are contained within Part 7 of the Proceeds of Crime Act 2002 (POCA). There are also separate money laundering offences related to terrorist property and terrorist financing contained within the Terrorism Act 2000. These laws apply across the UK, although England & Wales, Scotland and Northern Ireland are three separate criminal justice systems and independently enforce criminal laws and prosecute offences.

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs) also set out the obligations that regulated firms have in relation to anti-money laundering (AML) and counter-terrorist financing (CTF) and provide the basis for the AML procedures that regulated firms need to have.

2. What must the government prove to establish a criminal violation of the money laundering laws?

Money laundering under POCA

A prosecution can be brought against any person who commits one of three principal money laundering offences under POCA (sections 327–329). These are:

'The concealing offence' – it is an offence to conceal, disguise, convert or transfer or remove criminal property from the jurisdiction.

'The arrangements offence' – it is an offence to enter into or become concerned in an arrangement that a person knows or suspects would facilitate (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

'The possession offence' – it is an offence to acquire, use or have possession of criminal property. A person who acquires, uses or has possession of the property for adequate consideration (which does not include the provision of goods or services that the person knows or suspects may help another to carry out criminal conduct) does not commit an offence.

For these purposes 'money laundering' also includes attempts or conspiracies to commit any of the above offences. All offences are punishable by up to 14 years' imprisonment and/or an unlimited fine.

In relation to each of these offences any prosecution must prove (beyond reasonable doubt) the requisite activity in relation to 'criminal property' – which is defined as any property that constitutes or represents a person's benefit from criminal conduct (in whole or in part and whether directly or indirectly) (section 340(3) POCA).

'Criminal conduct' is any conduct that constitutes a criminal offence in any part of the United Kingdom or would do if it occurred within the jurisdiction, and therefore extends to overseas conduct (section 340(2) POCA). However, where the underlying/predicate criminal conduct takes place overseas, a money laundering offence will not be committed if the overseas conduct is lawful in the place where it occurs and is minor in nature (ie, it would be punishable with no more than 12 months' imprisonment under UK law, had it occurred there (except for prescribed offences – currently certain offences under the Gaming Act 1968, the Lotteries and Amusements Act 1976, and sections 23 and 25 of the Financial Services and Markets Act 2000 (sections 327(2A), 328(3) and 329(2A) POCA)).

The prosecution must also prove that the alleged money launderer knew or suspected that the property is criminal property – ie, they 'must think there is a possibility, which is more than fanciful, that the relevant facts exist' and a 'vague feeling of unease' would not be sufficient – R v Da Silva (2006) EWCA Crim 1654.

It is also immaterial who carried out the criminal conduct, who benefited from it and whether it occurred before or after the coming into force of POCA (section 340 POCA).

It is a defence to a principal money laundering offence if: (i) an 'authorised disclosure' (a suspicious activity report or SAR) is made to the National Crime Agency (NCA), requesting consent to undertake

the relevant activity; and (ii) appropriate consent (also called a 'Defence Against Money Laundering' (DAML) by the NCA) is given or deemed given before any act is done.

A person does not commit an offence under section 329 POCA if she or he acquired, used or had possession of the criminal property for 'adequate consideration' (section 329(2)(c) POCA) (ie, where the value of the consideration is not significantly less than the value of the property and the consideration does not assist another to carry out criminal conduct). This defence is available, for example, where the criminal property has been acquired through receipt of monies in relation to/in return for the provision of legitimate services that do not assist another to carry out criminal activity.

There are carve-outs from criminal liability where, for example, financial institutions are taking deposits of sums below a prescribed amount (currently £1,000) or where regulated sector (for the purposes of POCA) advisers who return such sums when terminating a relationship.

Money Laundering under the Terrorism Act 2000 (TA)

The TA, which, among other things, provides for offences of terrorist financing also created a 'laundering of terrorist property' offence if a person enters into or becomes concerned in an arrangement that facilitates the retention or control by or on behalf of another person of terrorist property.

'Terrorist property' means money or any other form of property that is likely to be used for the purposes of terrorism (including any resources of an organisation proscribed in Schedule 2, TA), or the proceeds of the commission of acts of terrorism and of acts carried out for the purposes of terrorism (section 14 TA).

'Proceeds' include any property that, wholly or partly and directly or indirectly, represents the proceeds of the act in question, as well as any payments or other rewards received in connection with its commission.

It is a defence if a person can prove that he or she did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

Criminal offences under MLRs

Failure to meet obligations (eg, to understand a firm's customer, its beneficial owner(s) and source of wealth or funds) under the MLRs is a criminal offence (under Regulation 86). The MLRs also create other offences relating to AML (eg, prejudicing an investigation and providing false or misleading information).

3. What are the predicate offences to money laundering? Do they include foreign crimes and tax offences?

Money laundering offences under POCA relate to criminal property, which is defined as any property that constitutes or represents a person's benefit from criminal conduct (in whole or in part and whether directly or indirectly) (section 340(3) POCA).

Criminal conduct is any conduct that constitutes a criminal offence in any part of the United Kingdom or would do if it occurred within the jurisdiction. This means that any type of conduct that is a criminal offence in the UK or that would be if it occurred in the UK, potentially gives rise to money laundering (section 340(2) POCA), that money laundering is not restricted to tax or any other types of crimes, but is, essentially, an 'all crimes' regime.

Foreign crimes are, therefore, predicate offences if the conduct in question would be criminal under UK law had it occurred in the UK, provided it would have been punishable by at least 12 months' imprisonment had it occurred in the UK (or currently certain offences under the Gaming Act 1968, the Lotteries and Amusements Act 1976, and sections 23 and 25 of the Financial Services and Markets Act 2000 (sections 327(2A), 328(3) and 329(2A) POCA)).

4. Is there extraterritorial jurisdiction for violations of your jurisdiction's money laundering laws?

Where acts of or in furtherance of laundering take place in the UK in relation to criminal property generated overseas, such acts will plainly come under the scope of the primary money laundering offences in POCA, provided the underlying conduct would have been criminal had it occurred in the UK.

Where criminal acts take place and have an impact upon victims in the UK, the laundering of the proceeds in a foreign jurisdiction may fall within the jurisdiction of the UK courts under POCA (R v Rogers (Bradley) and others [2014] EWCA Crim 1680). The court in Rogers concluded that Parliament intended the money laundering offences under POCA to have to have extra-territorial effect, but acknowledged that where the conversion of criminal property takes place in another jurisdiction and relates to conduct, and impacts victims, outside the UK, the UK courts will not claim jurisdiction.

5. Is there corporate criminal liability for money laundering offences, or is liability limited to individuals?

Criminal liability attaches to both legal and natural persons under UK criminal law, unless relevant provisions set out otherwise. Therefore, a corporate entity may be criminally liable for committing a money laundering offence under POCA or the TA or a criminal offence under the MLRs.

Currently, generally, corporate criminal liability must be established under the 'identification principle'. This requires the identification of a person or persons representing the 'controlling mind and will' of the company, who are of sufficient seniority and who have sufficient control such that their acts are attributable to the company itself. From 26 December 2023, a corporate or partnership will be criminally liable for, among other economic crimes, substantive money laundering under POCA or the TA or a criminal breach of the MLRs, where its senior managers, acting within the actual or apparent scope of their authority, commit a relevant offence.

For these purposes, a senior manager is someone who plays a significant role in, either:

- the making of decisions about the management/organisation of (or a substantial part of the activities of) the body corporate/partnership; or
- the actual managing or organising of the whole or a substantial part of those activities (section 196 Economic Crime and Corporate Transparency Act 2023 ECCTA).

(The government has also included a provision in the Criminal Justice Bill – which entered Parliament on 14/11/23 – seeking further to extend corporate/partnership criminal liability where their senior managers commit any criminal offences (and not just the economic crimes set out in ECCTA).

6. Which government authorities are responsible for investigating violations of the money laundering laws?

The police, the NCA and HM Revenue & Customs (HMRC) are the main authorities that investigate money laundering offences.

The Serious Fraud Office (SFO) investigates and prosecutes allegations involving serious or complex fraud/corruption, and such investigations can sometimes involve money laundering allegations.

The Financial Conduct Authority (FCA) investigates and prosecutes matters involving regulated entities or activities and often investigates allegations relating to money laundering, particularly breaches of the MLRs.

The FCA, HMRC, the Gambling Commission and 22 other professional bodies act as supervisory authorities under POCA and the MLRs. The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) was established in 2018 and is based within the FCA. Its aim is to improve the consistency of professional body AML supervision. It has the power to ensure that the 25 professional body supervisors meet the standards required by the Regulations. The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017/1301 set out OPBAS's duties and powers.

7. Which government agencies are responsible for the prosecution of money laundering offences?

Where the police, NCA or HMRC investigate matters such as money laundering offences, the Crown Prosecution Service is responsible for prosecuting them. The SFO and FCA also have the power to prosecute matters they investigate, which can involve money laundering activities.

Supervisory authorities may also take other regulatory action in relation to failures in money laundering systems and controls.

8. What is the statute of limitations for money laundering offences?

There is generally no statute of limitations (or limitation period) for criminal offences under UK law. The money laundering offences under POCA can only be committed after 24 March 2003 (when the relevant provisions of POCA came into force).

9. What are the penalties for a criminal violation of the money laundering laws?

For individuals the maximum sentence for committing:

- a substantive money laundering offence under POCA or TA, is 14 years' imprisonment or an unlimited fine (or both);
- an offence of 'failing to disclose', 'prejudicing an investigation' and 'tipping-off' (as relevant under POCA or TA) is five years' imprisonment or an unlimited fine (or both); and
- an offence under the MLRs is two years' imprisonment or an unlimited fine (or both).

For corporates or legal persons, all these offences carry a maximum sentence of an unlimited fine.

10. Are there civil penalties for violations of the money laundering laws? What are they?

In addition to criminal enforcement and potential penalties upon conviction for committing offences under POCA, TA and MLRs, the FCA and HMRC can pursue a civil investigation and take civil enforcement steps in relation to persons for failure to comply with the anti-money laundering provisions of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the 'MLRs' – see Chapter 2 of Part 9).

Such enforcement steps may include:

- the imposition of a monetary penalty in a sum that appears appropriate to the regulator;
- removing 'fit and proper' status from relevant individuals;
- suspending a firm or individual from undertaking regulated activities;
- refusing, suspending or cancelling a business' registration or authorisation;
- making a public statement censuring a business;
- imposing a temporary or permanent prohibition on an individual having a management role within a relevant organisation; and
- obtaining a High Court injunction in respect of likely (further) breaches of a relevant requirement.

In some instances, the FCA may issue a warning notice before finally concluding whether or not there has been a breach of the requirements. And individual convicted of offences, including a money laundering offence may be disqualified from acting as a company director for a certain period.

11. Is asset forfeiture possible under the money laundering laws? Is it part of the criminal prosecution? What property is subject to forfeiture?

There are various processes available to the UK courts/authorities to seek to deprive a criminal of the (use of the) proceeds of crime, including in respect of convicted money launderers. While many of the

relevant provisions governing these processes are contained within POCA (the statute that also criminalises money laundering) the processes are not peculiar to money laundering offences.

Where a convicted defendant is considered by the court (usually at the instigation of the relevant prosecutor) to have obtained property as a result of his or her general or particular criminal conduct it will proceed to determine whether a confiscation order should be made.

Confiscation

A confiscation order may be made against a person (natural or legal) following a conviction for a criminal offence in the Crown Court or following a committal (or sending) for sentence (or for the purposes of confiscation) from the magistrates' court to the Crown Court.

A confiscation order does not attach to specific property but is made for the recovery of a sum said to represent the value of the benefit from criminal conduct – the 'recoverable amount' (and in certain circumstances, ie, depending on whether the court determines that the offender has a 'criminal lifestyle', the court can make a rebuttable presumption that all the assets in the offender's possession represent the offender's benefit from criminal conduct that is liable to confiscation).

Where a relevant convicted defendant can show that the total assets in their possession – minus any existing obligations to pay court orders (including any criminal fine ordered in the instant criminal proceedings) and any 'preferential debts' – is less than the 'recoverable amount' then the confiscation order will be made for no more than this 'available amount'.

In respect of individual defendants when making a confiscation order the court will set a period of imprisonment in the event that the defendant defaults on payment.

The prosecution agencies may apply to court for a 'restraint order' under POCA to prevent someone, who is the subject of criminal investigation or proceedings, from dealing (for the time being) with property held by them, where there are reasonable grounds to suspect that they have benefited from criminal conduct. The purpose of a restraint order is to preserve property for potential confiscation proceedings.

Disgorgement

Under the deferred prosecution agreement (DPA) regime (which is an alternative way of resolving investigations into criminal conduct that does not result in a trial or conviction), a corporate that enters into a DPA may be required to disgorge a sum representing the profits from alleged criminality (along with paying a financial penalty and potentially agreeing to monitorship or other conditions/requirements).

Compensation

Where a defendant is convicted of a crime that resulted in victims suffering loss or damage, the court is under a duty to consider making a compensation. However, this process is only, currently, suited to relatively straightforward cases of loss or damage.

12. Is civil or non-conviction-based asset forfeiture permitted under the money laundering laws? What property is subject to forfeiture?

Civil recovery

POCA provides for a civil recovery regime that is not dependent on any convictions being obtained. Under Part 5 of POCA, a Civil Recovery Order (CRO) may be sought from the High Court by certain UK enforcement authorities against any person it considers that holds 'recoverable property'.

By section 241 POCA, recoverable property constitutes property that is or represents property obtained through 'unlawful conduct' that is:

- conduct that is unlawful under UK criminal law;

- in relation to conduct outside the UK – is conduct that is criminal under the criminal law of the jurisdiction where the conduct occurred and would be criminal under UK law had it occurred in the UK; or
- is conduct that occurs outside the UK and constitutes, or is connected to, the commission of a gross human rights abuse or violation and (irrespective of whether it is criminal in the jurisdiction where the conduct took place) would be an indictable offence if it had occurred in the UK.

Whether property has been obtained through unlawful conduct is assessed on the balance of probabilities and a CRO attaches to the property itself, rather than the person holding it.

Asset freezing and forfeiture

Under POCA, certain UK authorities have the power to freeze monies held in bank and building society accounts and to forfeit cash in summary (magistrates' court) proceedings.

An account freezing order (AFO) may be made where there are reasonable grounds to suspect that money (at least £1,000) held in a bank account is recoverable property (ie, obtained through unlawful conduct) or intended for use in unlawful conduct. An AFO may last up to two years. Similar provisions are available in relation to detaining cash.

At the end of, or at any point during, the period of cash detention or account freezing, the authorities may apply for the relevant sums to be forfeited. Although there is a higher evidence bar to be satisfied as compared with an AFO (the court must be satisfied that the money or part of it was actually obtained by unlawful conduct, or is intended by any person for use in unlawful conduct), but there is no requirement for a criminal conviction to have been obtained against any party (or even a criminal investigation to have been opened).

Anti-money laundering

13. Which laws or regulations in your jurisdiction impose anti-money laundering compliance requirements on financial institutions and other businesses?

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs) set out the obligations that regulated firms have in relation to AML and counter-terrorist financing and provide the basis for the AML compliance procedures that regulated firms need to have in place.

14. What types of institutions are subject to the AML rules?

The MLRs impose anti-money laundering and compliance requirements on financial institutions and the businesses specified in Regulation 8.

These include:

- credit institutions (which are defined by reference to the Capital Requirements Regulation and which include deposit taking and credit providing institutions);
- financial institutions (which are defined by reference to listed activity that includes lending, payment services, trading and involvement in issuing securities);
- auditors, insolvency practitioners, external accountants and tax advisers;
- Independent legal professionals;
- trust or company service providers;
- estate agents and letting agents;
- high-value dealers;
- casinos;
- art market participants;

- crypto-asset exchange providers; and
- custodian wallet providers.

The MLRs apply to the activities of relevant personnel at relevant regulated organisations and impose obligations or requirements in relation to risk assessment and knowledge of customers and transactions and implementation of appropriate policies and procedures. Regulated firms will also have to follow guidance given by their regulators.

POCA provides that those that are in the Regulated Sector also have an obligation to report suspicions or knowledge (actual or objective) of money laundering to the NCA.

Those outside the Regulated Sector (which can commit the substantive money laundering offences under POCA) are not obliged to implement AML measures, but such organisations might seek to implement procedures to reduce the risk that they become involved in money laundering.

15. Must payment services and money transmitters be licensed in your jurisdiction? Are payment services and money transmitters subject to the AML rules and compliance requirements?

Money transmitters and money service businesses are required by the MLRs to be registered and authorised by the FCA.

Payment service providers and money transmitters are covered by Regulation 8 of the MLRs, as supplemented by the definitions in Regulation 10, Schedule 2 and the Payment Services Regulations 2017, and are 'relevant persons'. As such, they are subject to the AML rules and compliance requirements.

16. Are digital assets subject to the AML rules and compliance requirements?

The MLRs requirements apply to cryptoassets (ie, 'a cryptographically secured digital representation of value or contractual rights that uses a form of distributed ledger technology and can be transferred, stored or traded electronically') exchange providers, ie, those firms that provide the following services:

- exchanging cryptoassets for money;
- exchanging one cryptoasset for another; and
- operating a machine that uses automated processes to exchange cryptoassets for money or vice versa; and
- custodian wallet providers – ie, those firms that keep and administer cryptoassets, or provide cryptographic keys, on behalf of their customers.

17. What are the specific AML compliance requirements for covered institutions?

The MLRs require relevant institutions to undertake an assessment of the money laundering risks posed by their business and to have in place policies controls and procedures proportionate to those risks.

Relevant institutions are required to undertake customer due diligence at the commencement of a business relationship, which involves:

- identifying the customer and verifying that identity; and
- assessing the purpose and intended nature of the relationship.

In respect of corporate customers, relevant institutions must obtain and verify:

- the name of the corporate;
- its registration number; and
- the address of its registered office or principal place of business

and must (unless the corporate is listed on a regulated market) take reasonable steps to determine the law to which the corporate is subject as well as the names of its board of directors as well as must identify the beneficial owner(s) of the corporate customer and take reasonable steps to verify the identity of such owner(s).

The measures above must be appropriate to the risk faced by the institution and simplified due diligence will be justified where the customer presents a lower level of risk. Where there is a higher level of risk institutions are required to carry out enhanced due diligence, in particular where:

- a business relationship is entered into with a person established in a high-risk third country (Schedule 3ZA MLRs sets out the relevant countries and is amended from time to time) – unless that high-risk person is the subsidiary of an undertaking established in a country that has legislation equivalent to the MLRs and that parent is supervised for compliance and the subsidiary complies fully with its parent's procedures);
- a correspondent relationship with a credit institution or a financial institution is entered into;
- the customer is a politically exposed person (or a family member or known close associate of a politically exposed person);
- the transaction is complex or unusually large, has an unusual pattern or seems to have no apparent legal or economic purpose; and
- in circumstances where a high risk of money laundering or terrorist financing had been identified.

Relevant institutions are required to cease doing business with customers that cannot be identified and that pose an unacceptably high level of risk.

Businesses/Nominated Officers in the Regulated Sector are obliged under POCA (sections 330/331) to report to the authorities (the NCA) any knowledge, suspicion or reasonable grounds for suspicion of money laundering.

Relevant institutions are required under the MLRs to retain records of information obtained during the customer due diligence process for a period of at least five years after the end of the related transaction.

18. Are there different AML compliance requirements for different types of institutions?

All relevant institutions that come under the MLRs must comply with the same general compliance requirements. Different types of institutions face different risks based on:

- the relevant sector;
- the customer base;
- the geographical location of the institution's business and client base; and
- the nature of their products and services.

The Joint Money Laundering Steering Committee issues HM Treasury-approved Guidance to those institutions that have to comply with the MLRs also produce sector-specific Guidance, which applies to the different sector areas.

The general requirements of the MLRs include the requirement to undertake customer due diligence. The degree and extent of the required due diligence depends on the level of risk faced by the institution by the relevant customer.

Customers that are assessed as presenting a lower level of risk may be subject to simplified due diligence (meaning standard client due diligence can be adapted according to the risk level presented). However, those that present a heightened risk must be subject to enhanced due diligence. In particular, enhanced due diligence must be undertaken if:

- a business relationship is entered into with a person established in a high-risk third country (Schedule 3ZA MLRs sets out the relevant countries and is amended from time to time) – unless that high-risk person is the subsidiary of an undertaking established in a country that has legislation equivalent to the MLRs and that parent is supervised for compliance and the subsidiary complies fully with is parent's procedures);

- a correspondent relationship with a credit institution or a financial institution is entered into;
- the customer is a politically exposed person (or a family member or known close associate of a politically exposed person);
- the transaction is complex or unusually large, has an unusual pattern or seems to have no apparent legal or economic purpose; and
- in circumstances where a high risk of money laundering or terrorist financing had been identified.

19. Which government authorities are responsible for the examination and enforcement of compliance with the AML rules?

The MLRs et out that the FCA, HMRC, the Gambling Commission and 22 other professional bodies (set out in Schedule 1 to the MLRs) act as supervisory authorities. Not all of these are governmental.

The OPBAS was set up in 2018. This body sits within the FCA and its objective is to improve the consistency of professional body AML supervision. It has the power to ensure that the professional bodies set out in Schedule 1 to the Regulations meet the standards required by the Regulations.

20. Are there requirements to monitor and report suspicious activity? What are the factors that trigger the requirement to report suspicious activity? What is the process for reporting suspicious activity?

Those in the POCA regulated sector are obliged to report suspicions or knowledge (actual or objective – ie, where there is at least reasonable grounds to suspect) of money laundering.

Under section 330 of POCA, any person in the regulated sector can commit an offence of failing to make a required disclosure to a nominated officer or to the UK's Financial Intelligence Unit (the NCA), where:

- they know or suspect, or have reasonable grounds for knowing or suspecting, that another person is engaged in money laundering;
- the information on which the knowledge or suspicion is based (or which gives rise to reasonable grounds for such) came to them in the course of a business in the regulated sector; and
- they are able to identify that other person or the whereabouts of any of the laundered property, or they believe, or it is reasonable to expect them to believe, that the information will or may assist in identifying that other person or the whereabouts of any of the laundered property.

Where the above conditions are satisfied a disclosure must be made (a Suspicious Activity Report (SAR)) to the NCA, as soon as practicable after the information or grounds for belief came to them. An offence is not committed if there is a reasonable excuse for not making the disclosure, or the information came to a legal adviser or relevant professional adviser in privileged circumstances.

Under section 331 of POCA, a nominated officer, often the money laundering reporting officer (MLRO), commits an offence if they fail to inform the NCA of disclosures received under section 330 of POCA, where they know or suspect, or have reasonable grounds to know or suspect, that another person is engaged in money laundering.

A relevant institution in the Regulated Sector is required to have appropriate procedures in relation to AML including procedures requiring a person in the regulated sector to report suspicions to the MLRO (MLRs 19).

The MLRO will then consider matters reported including with reference to CDD materials and other information, and then determine whether a SAR needs to be made to the NCA.

Section 332 of POCA creates an additional 'failure to disclose' offence for nominated officers of businesses operating outside the regulated sector; however, the offence only applies if a nominated officer has actually been appointed. Liability only attaches to a nominated officer and not to other employees. The offence is not committed unless the nominated officer has actual knowledge or suspicion of money laundering.

21. Are there confidentiality requirements associated with the reporting of suspicious activity? What are the requirements? Who do the confidentiality requirements apply to? Are there penalties for violations of the confidentiality requirements?

Persons in the Regulated Sector can commit a 'tipping off' offence under POCA if they disclose that a SAR has been made, or disclose the existence of a money laundering investigation (whether such investigation is being contemplated or being carried out), in a manner that is likely to prejudice any investigation arising from the SAR (section 333A POCA). There are exceptions including for disclosures made to other professionals and for the purposes of seeking to prevent an offence under POCA being committed.

It is also an offence (inside or outside the regulated sector) to make a disclosure that is likely to prejudice the investigation, or to falsify, conceal, destroy or otherwise dispose of documents relevant to the investigation or cause or permit another person to do so, knowing or suspecting that an investigation is under way or planned (section 342 POCA). It is a defence to show that the person did not know or suspect that the disclosure was likely to prejudice the investigation.

The maximum criminal sentences for committing an offence of 'failing to disclose', 'prejudicing an investigation' and 'tipping-off' (as relevant under POCA or TA) is five years' imprisonment (for individuals) or an unlimited fine (or both).

Regulation 66 of the MLRs empowers a supervisory authority to require a copy of any SAR that has been filed with the NCA.

22. Are there requirements for reporting large currency transactions? Who must file the reports, and what is the threshold?

The MLRs/POCA do not provide particular requirements for keeping a record of or reporting large currency transactions, but high-value dealers who accept or make more than €10,000 (or equivalent) cash payments in relation to goods are required to register and be supervised under the MLRs.

23. Are there reporting requirements for cross-border transactions? Who is subject to the requirements and what must be reported?

The MLRs/POCA do not provide particular requirements in relation to cross-border transactions.

24. Is there a financial intelligence unit (FIU) or other government agency responsible for analysing the information reported under the AML rules?

The UK Financial Intelligence Unit is independently located within the National Economic Crime Command as part of the NCA.

25. What are the penalties for failing to comply with your jurisdiction's AML rules, and are they civil or criminal?

Relevant regulators, such as the FCA may seek to enforce against institutions or individuals who breach the MLRs. Such regulators may:

- impose fines;
- censure those in breach by published statement;
- remove 'fit and proper' status from an individual;
- suspending a firm or individual from undertaking regulated activities;
- refuse, suspend or cancel a business' registration or authorisation;
- impose a temporary or permanent prohibition on an individual having a management role within a relevant legal person; and
- seek an injunction from the High Court where there is or may be a breach of a relevant requirement.

In certain instances, a breach of the MLRs may constitute a criminal offence and the offence can be committed by an individual or a corporate (eg, breach of a relevant requirement under the MLRs). From 26 December 2023, a corporate will be guilty of an offence under the MLRs (among other economic crimes) if its senior manager(s) commit the offence while acting within their actual or apparent authority.

Offences under the MLRs are punishable with a maximum penalty of two years' imprisonment and/or an unlimited fine for individuals, and an unlimited fine for corporates.

Where a corporate has committed an offence and it can be shown that it was committed with the consent or connivance of an officer of the corporate, or the offence can be attributed to any neglect on the part of an officer, the officer as well as the body corporate is guilty of the offence. The maximum penalty in each case is two years' imprisonment or an unlimited fine, or both.

Regulators may also sanction firms or individuals by reference to other regulatory rules that are in place, for example, the Financial Conduct Authority's Principles for Businesses.

26. Are compliance personnel subject to the AML rules? Can an enforcement action be brought against an individual for violations?

Compliance personnel are subject to the MLRs. Breach of the regulations may cause the regulator to:

- remove 'fit and proper' status from an individual;
- suspend that individual from undertaking regulated activities; or
- prohibit the individual from having a management role within a relevant legal person.

A breach of the MLRs might constitute a criminal offence and this can be committed by an individual or a corporate. Where a corporate has committed an offence and it can be shown that it was committed with the consent or connivance of an officer of the corporate, or if the offence can be attributed to negligence on the part of the officer, the officer as well as the body corporate will be guilty of an offence.

27. What is the statute of limitations for violations of the AML rules?

There is generally no statute of limitations (or limitation period) for criminal offences under UK law.

28. Does your jurisdiction have a beneficial ownership registry or an entity or office that collects information on the beneficial ownership of legal entities?

A beneficial ownership of UK companies register (the register of Persons with Significant Control) is publicly available at Companies House.

These requirements have since been amended to introduce a requirement on institutions covered by the MLRs to notify the Registrar of Companies of any material discrepancies in the register.

The Companies Act 2006 has been amended to empower Companies House to seek to verify the identity of the officers and beneficial owners of companies (although at the time of writing these provisions have not yet entered into force).

In August 2022, the Register of Overseas Entities came into being. Overseas entities that own property in the UK are required to apply for inclusion on this register. In so doing, they are also required to disclose their beneficial owners.

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Dan leads Seladore's white-collar and regulatory disputes practice, having more than 20 years' experience (with over a decade as a partner) in Herbert Smith Freehills' corporate crime and investigations' practice and before that as a criminal barrister. Dan also has expertise in advising clients in relation to issues raised by the developing area of business and human rights.

Dan helps clients with some of their most serious, reputationally important issues that go beyond business as usual.

Dan advises and represents corporate, institutional and individual clients on financial crime matters, with a particular focus on bribery/corruption, sanctions (in particular recent sanctions targeting Russia), fraud, regulatory investigations, insider dealing, money laundering, accounting irregularities and connected disputes.

Dan has significant experience working with clients in connection (whether as suspects, witnesses or victims) with internal and external criminal and regulatory investigations, including those conducted by the UK Serious Fraud Office, FCA, Police and HMRC. He represents clients facing prosecution and also assists clients acting as witnesses in domestic and foreign criminal proceedings.

Having also spent over two decades advising in connection with due diligence, corruption and sanctions issues (including in relation to transactions) as well as sanctions, anti-money laundering, anti-bribery and Business and Human Rights procedures, Dan is well placed to advise clients when things go wrong, when they are drawn into investigations and when such matters become contentious.

Seladore Legal

Our partnership is made up of experienced litigators with expertise in complex cross-border commercial disputes. Our lawyers have been involved in some of the biggest cases before the High Court.

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