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The SRA's AML & CFT campaign

In September 2014 the Solicitors Regulation Authority (SRA) announced that it was 'stepping up its efforts to ensure solicitors firms do not become embroiled in money laundering activity and are compliant with the various regulations and legislation associated with anti-money laundering compliance'. This also covers CFT (Combating the Financing of Terrorism). See <http://sra.org.uk/sra/news/press/aml-campaign-launch-2014.page>

The announcement was made against a background of the impending Financial Action Task Force mutual evaluation of the UK in the spring of 2016.

The SRA's efforts will include thematic reviews of larger firms and we are already advising a number of firms on their preparation for the visits.

This special edition of Risk Update focuses on some of the issues which firms need to consider – whether or not they are in line for a thematic visit, as they may come under the spotlight in any event. We have identified some of the pressure points which we have encountered in our work with a wide cross-section of firms including some of the largest UK and

The SRA thematic visits

These will include a review of systems, and interviews with managing partners, MLROs, COLPs and COFAs, fee earners and members of finance teams. You need to ensure all these people are up to date, your approach is properly risk-based and appropriate to the type of work you undertake and your training records are also complete. Firms with centralised client and matter engagement teams, which most larger firms now have, should ensure the team members are up to speed.

How will you ensure that fee earners are ready? Do they understand how to assess financial crime risks? Can you produce a list of higher risk matters which is accurate? Interviewing is time consuming: we do online testing with Desktop, a system we have developed over the past 11 years. We can also provide in house training, either generic or focused on specific practice, and workshops for client and matter inception teams. We have also undertaken audits for a number of firms.

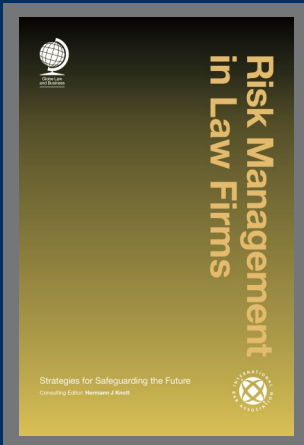
An essential part of the preparation will include ensuring that documentation is up to date – do your manuals still refer to the Serious Organised Crime Agency (SOCA) which was replaced by the National Crime Agency (NCA) on 7 October 2013? Not a serious error, you may think, but it conveys an impression that your policies and procedures have not been reviewed in the past year. It is not that long since we last found a firm's procedures referring to the National Criminal Intelligence Service (NCIS) which was replaced by SOCA in 2006!

We know from past experience, particularly the reviews of financial stability, that the SRA will, not surprisingly, develop their knowledge and understanding as their programme progresses. How do your systems compare with other firms? We have advised a wide cross-section of firms and can assist in benchmarking. We are already advising firms in order to help them prepare for their thematic reviews.

Implications of the fourth money laundering directive

This has been a long time coming, but is expected to be finalised in the first quarter of 2015. When implemented, it will require firms in the regulated sector to prepare a written risk assessment. However, in our experience other supervisors already expect the firms they regulate to have a written risk assessment in place. We have been advising a number of larger law firms which have been undertaking this.

Publications



[Risk Management in Law Firms](#)



[The Compliance Calendar Toolkit for Law Firms](#)

Events

Frank Maher will be speaking at the IBA Annual Conference in Tokyo (19-24 October 2014)

Frank Maher will be chairing Managing Partner's 11th annual Risk Management for Law Firms (3 December 2014)

For more details see our [website](#).

AML compliance issues in practice

Possibly the biggest single cause of compliance failure in our experience — in most firms—is in the area of ongoing monitoring. Either firms do not realise the need for it at all, or, if they do, they fail to appreciate what is required to comply. Regulation 8 of the Money Laundering Regulations 2007 requires ongoing monitoring of a business relationship. Note in particular —

(2) “Ongoing monitoring” of a business relationship means—

- (a) scrutiny of transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with the relevant person’s knowledge of the customer, his business and risk profile; and
- (b) keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date.

Regulation 14 (1) requires that ‘Where the customer has not been physically present for identification purposes, a relevant person must take specific and adequate measures to compensate for the higher risk...’ This applies to a large proportion of many firms’ work, and we rarely find firms complying in practice.

Regulation 14 (4) imposes specific requirements for firms ‘who [propose] to have a business relationship or carry out an occasional transaction with a politically exposed person...’ and again, we find compliance is often lacking. This is an increasing risk area with high ranking officials in foreign countries seeking to invest in the London property market.

Another area where firms have been failing in the past is in seeking consent to transactions, and the NCA has announced a change in its policy from 1 October 2014 under which it will reject consent requests that do not include reasons for suspicion or a statement regarding criminal property.

Frequently our advice is sought in relation to legal professional privilege, where difficult issues arise following service of a production order. This can involve finely balanced judgments, particularly on the application of the crime-fraud exception.

When problems are found...

We have assisted firms under investigation, and by providing expert evidence in professional negligence claims, where their compliance is under the microscope for work they did years ago. This can be a cruel environment in which to have your systems tested – it is too easy to assess performance against current standards and current legislation and guidance.

Legal Risk partner Sue Mawdsley has delivered training for the Law Society and for a variety of law firms for many years and is uniquely placed to advise on the standards which were in place throughout the period of law firm money laundering regulation. She has provided expert evidence for court use and is co-author of the chapter on anti-money laundering in the new International Bar Association book on Risk Management in Law Firms. For further details see <http://www.globelawandbusiness.com/RML/>

International expansion: AML implications

Increasingly firms are developing their international practice— either through overseas offices, or by attracting work from overseas. We have advised many firms in both these scenarios.

There is heightened AML risk arising from international sanctions. It is vital that all staff understand the issues in this fast-developing area. And it is not just an issue for firms which recognise that they are operating in high risk jurisdictions: we have even encountered a small, provincial high street practice with a personal injury client who appeared on a sanctions list – even terrorists have accidents!

Tools for AML compliance

Outcome 7.5 in the SRA Code of Conduct 2011 requires that ‘you comply with legislation applicable to your business, including anti-money laundering and data protection legislation;’

That nothing has gone wrong – yet – is not enough: firms must be able to *demonstrate* compliance. Where is your evidence? Evidence may come in the form of (a) a risk assessment, and (b) an annual report by the MLRO to the firm’s management.

We can advise firms on the preparation of both these.

For further information on any of the above, please contact info@legalrisk.co.uk

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