APPENDIX II

SUMMARY OF UK LEGISLATION

Proceeds of Crime Act 2002[1] (as amended)

1. The Proceeds of Crime Act 2002 (POCA) consolidates and extends the existing UK legislation regarding money laundering. The legislation covers all crimes and any dealing in criminal property, with no exceptions and no de minimis. POCA, as amended:

- empowers the NCA, to conduct an investigation[2] to discover whether a person holds criminal assets and to recover the assets in question.

- creates five investigative powers for the law enforcement agencies:
  - a production order[3]
  - a search and seizure warrant[4]
  - a disclosure order[5]
  - a customer information order[6]
  - an account monitoring order[7]

- establishes the following criminal offences:

  - a criminal offence8 to acquire, use, possess, conceal, disguise, convert, transfer or remove criminal property from the jurisdiction, or to enter into or become concerned in an arrangement to facilitate the acquisition, retention, use or control of criminal property by another person

  - a criminal offence9 for persons working in the regulated sector of failing to make a report where they have knowledge or suspicion of money laundering, or reasonable grounds for having knowledge or suspicion, that another person is laundering the proceeds of any criminal conduct, as soon as is reasonably practicable after the information came to their attention in the course of their regulated business activities

    Note: There are no provisions governing materiality or de minimis thresholds for having to report under POCA (although for deposit-taking firms, a transaction under £250 may be made without consent under certain circumstances – see paragraph 6.73).

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[1] 2002 ch 29
[2] section 341(2)
[3] section 345
[4] section 352
[5] section 357
[6] section 363
[7] section 370 – see also Terrorism Act s38A
[8] sections 327 - 329
[9] sections 330 and 331

- a criminal offence[10] for anyone to take any action likely to prejudice an investigation by informing (e.g., tipping off) the person who is the subject of a suspicion report, or anybody else, that a disclosure has been made to a nominated officer or to the NCA, or that the police or customs authorities are carrying out or intending to carry out a money laundering investigation.

- a criminal offence[11] of destroying or disposing of documents which are relevant to an investigation.

- a criminal offence[12] by a firm of failing to comply with a requirement imposed on it under a customer information order, or in knowingly or recklessly making a statement in purported compliance with a customer information order that is false or misleading in a material particular.

- sets out maximum penalties:

  - for the offence of money laundering of 14 years' imprisonment and/or an unlimited fine.

    Note: An offence is not committed if a person reports the property involved to the National Crime Agency (NCA) or under approved internal arrangements, either before the prohibited act is carried out, or as soon afterwards as is reasonably practicable.

  - for failing to make a report of suspected money laundering of five years' imprisonment and/or an unlimited fine.

  - for "tipping off" of two years' imprisonment and/or an unlimited fine.

  - for destroying or disposing of relevant documents of five years' imprisonment and/or an unlimited fine.

Terrorism Act 2000[13], and the Anti-terrorism, Crime and Security Act 2001[14]

2. The Terrorism Act establishes a series of offences related to involvement in arrangements for facilitating, raising or using funds for terrorism purposes. The Act:

   - makes it a criminal offence for any person not to report the existence of terrorist property where there are reasonable grounds for knowing or suspecting the existence of terrorist property

   - makes it a criminal offence[15] for anyone to take any action likely to prejudice an investigation by informing (i.e. tipping off) the person who is the subject of a suspicion report, or anybody else, that a disclosure has been made to a nominated officer or to the NCA, or that the police or customs authorities are carrying out or intending to carry out a terrorist financing investigation

[10] section 333A
[11] section 341(2)(b)
[12] section 366
[13] 2000 ch 11
[14] 2001 ch 24
[15] section 39

- grants16 a power to the law enforcement agencies to make an account monitoring order, similar in scope to that introduced under POCA

- sets out the following penalties:

  - the maximum penalty for failure to report under the circumstances set out above is five years' imprisonment, and/or a fine.

  - the maximum penalty for the offence of actual money laundering is 14 years' imprisonment, and/or a fine.

3. The definition of terrorist property, involvement with which is an offence, includes resources of a proscribed organisation. The primary source of information on proscribed organisations, including up-to-date information on aliases, is the Home Office. A list of organisations which have been proscribed under the Terrorism Act can be found at: www.homeoffice.gov.uk/security/terrorism-and-the-law/terrorism-act/proscribed-groups?version=1.

4. The Anti-terrorism, Crime and Security Act 2001 gives the authorities power to seize terrorist cash, to freeze terrorist assets and to direct firms in the regulated sector to provide the authorities with specified information on customers and their (terrorism-related) activities. Additionally under the Anti-Terrorism, Crime and Security Act 2001, HM Treasury may issue a freezing order in respect of individuals, entities or organisations outside of the UK where there is reasonable belief that they have taken or are likely to take action which is:

   - to the detriment of the UK economy
   - a threat to the life or property of one or more nationals or residents of the UK

Counter-terrorism Act 2008, Schedule 7

5. Schedule 7 to the CTA gives power to HM Treasury to issue directions to firms in the financial sector. The kinds of requirement that may be imposed by a direction under these powers relate to:

   - customer due diligence;
   - ongoing monitoring;
   - systematic reporting ;
   - limiting or ceasing business.

6. The requirements to carry out CDD measures and ongoing monitoring build on the similar obligation under the ML Regulations. The requirements for systematic reporting and limiting or ceasing business are new.

7. The Treasury may give a direction **if one or more** of the following conditions is met in relation to a non-EEA country:

   - that the Financial Action Task Force has advised that measures should be taken in relation to the country because of the risk of terrorist financing or money laundering activities being carried on

[16] section 38A and Schedule 6A

(a) in the country,

(b) by the government of the country, or

(c) by persons resident or incorporated in the country.

- that the Treasury reasonably believe that there is a risk that terrorist financing or money laundering activities are being carried on

  (a) in the country,

  (b) by the government of the country, or

  (c) by persons resident or incorporated in the country,

  and that this poses a significant risk to the national interests of the UK.

- that the Treasury reasonably believe that

  (a) the development or production of nuclear, radiological, biological or chemical weapons in the country, or

  (b) the doing in the country of anything that facilitates the development or production of any such weapons,

  poses a significant risk to the national interests of the UK.

Financial sanctions

8. HM Treasury maintains a Consolidated List of targets listed by the United Nations, European Union and United Kingdom under legislation relating to current financial sanctions regimes. This list includes all individuals and entities that are subject to financial sanctions in the UK. This list can be found at: http://www.hm-treasury.gov.uk/d/sanctionsconlist.pdf

9. It is a criminal offence to make payments, or to allow payments to be made, to targets on the list maintained by HM Treasury. This would include dealing direct with targets, or dealing with targets through intermediaries (such as lawyers or accountants). Firms therefore need to have an appropriate means of monitoring payment instructions to ensure that no payments are made to targets or their agents. In the regulated sector this obligation applies to all firms, and not just to banks.

10. Guidance on compliance with the financial sanctions regime is set out in paragraphs 5.3.54 – 5.3.61.

Money Laundering Regulations 2017[17]

11. The ML Regulations specify arrangements which must be in place within firms within the scope of the Regulations, in order to prevent operations relating to money laundering or terrorist financing.

12. The ML Regulations apply[18], inter alia, to:

- The regulated activities of all financial sector firms, i.e.:
  - banks, building societies and other credit institutions;
  - individuals and firms engaging in regulated investment activities under FSMA;
  - issuers of electronic money;

[17] SI 2017/692(as amended by The Money Laundering and Terrorist Financing (Amendment) Regulations 2019)
[18] Regulation 8

- insurance companies undertaking long-term life business, including the life business of Lloyd's of London;

- Bureaux de change, cheque encashment centres and money transmission services (money service businesses);

- Trust and company service providers;

- Casinos;

- Dealers in high-value goods (including auctioneers) who accept payment in cash of €10,000 or more (either single or linked transactions);

- Estate agents and letting agents, legal and accountancy services providers, when undertaking relevant business;~~.~~

- Art market participants;

- Cryptoasset exchange providers;

- Custodian wallet providers.

13. The ML Regulations require firms to appoint a nominated officer to receive internal reports relating to knowledge or suspicion of money laundering.

14. Firms within the scope of the ML Regulations are required to establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in a risk assessment undertaken by the firm. These policies, controls and procedures cover:

- Risk management practices;
- internal controls;
- customer due diligence;
- reporting and record-keeping;
- monitoring and management of compliance with, and the internal communication of, such policies, controls and procedures.

15. The FCA may[19] institute proceedings (other than in Scotland) for offences under prescribed regulations relating to money laundering. This power is not limited to firms or persons regulated by the FCA. Whether a breach of the ML Regulations has occurred is not dependent on whether money laundering has taken place: firms may be sanctioned for not having adequate AML/CTF systems. Where failure to comply with any of the requirements of the ML Regulations constitutes an offence, the punishment is a maximum of two years' imprisonment, or a fine, or both.

FCA-regulated firms – the FCA Handbook

16. FSMA makes the prevention of financial crime integral to the discharge of the FCA's functions and fulfilment of its objectives. This means that the FCA is concerned that the firms it regulates and their senior management are aware of the risk of their businesses being used in connection with the commission of financial crime, and take appropriate measures to prevent financial crime, facilitate its detection and monitor its incidence.

[19] FSMA, s 402(1)(b)

17. Firms may only engage in a regulated activity[20] in the UK if it is a regulated or exempt person. A person can become a regulated person as a result of: (a) being given a "permission" by the FCA under Part 4A of FSMA (known as a "Part 4A permission"); or (b) by qualifying for authorisation under FSMA itself. As an example of the latter, an EEA firm establishing a branch in, or providing cross-border services into, the UK can qualify for regulation under FSMA Schedule 3 and, as a result, be given a permission; although such firms are, generally, regulated by their home state regulator, they are regulated by the FCA in connection with the regulated activities carried on in the UK.

18. A firm may only carry on regulated business in accordance with its permission. A firm with a Part 4A permission may apply to the FCA to vary its permission, add or remove regulated activities, to limit these activities (for example, the types of client with or for whom the firm may carry on an activity) or to vary the requirements on the firm itself. Before giving or varying a Part 4A permission, the FCA must ensure that the person/firm will satisfy and continue to satisfy the threshold conditions in relation to all of the regulated activities for which he has or will have permission. If a firm is failing, or is likely to fail, to satisfy the threshold conditions, the FCA may vary or cancel a firm's permission.

19. Threshold condition 5 (Suitability) requires the firm to satisfy the FCA that it is "fit and proper" to have Part 4A permission having regard to all the circumstances, including its connection with other persons, the range and nature of its proposed (or current) regulated activities and the overall need to be satisfied that its affairs are and will continue to be conducted soundly and prudently. Hence, the FCA "will consider whether a firm is ready, willing and organised to comply, on a continuing basis, with the requirements and standards under the regulatory system which apply to the firm, or will apply to the firm, if it is granted Part 4A permission, or a variation of its permission". The FCA will also have regard to all relevant matters, whether arising in the UK or elsewhere. In particular, the FCA will consider whether a firm "has in place systems and controls against money laundering of the sort described in SYSC 6.1.1 R to SYSC 6.3.10 G". (COND 2.5.7G)

20. SYSC requires FCA-regulated firms (subject to some specified exceptions: see paragraph 1.35 above) to have effective systems and controls for countering the risk that a firm might be used to further financial crime, and specific provisions regarding money laundering risks. It also requires such firms to ensure that approved persons exercise appropriate responsibilities in relation to these AML systems and controls. Parts of the FCA Handbook that are relevant to AML procedures, systems and controls, include:

    - APER - Principle 5 requires an approved person to take reasonable steps to ensure that the business of the firm for which he is responsible is organised so that it is controlled effectively[21];
    - COND – In relation to its ongoing assessment as to whether a firm meets the fitness and properness criterion, a firm is specifically required to have in place systems and controls against money laundering of the sort described in SYSC 6.1.1 R to SYSC 6.3.10 G[22];
    - DEPP – When considering whether to take disciplinary action in respect of a breach of the money laundering rules in SYSC 3.2 or SYSC 6.3 the FCA will have regard to whether a firm has followed relevant provisions in the JMLSG guidance for the financial sector[23];
    - PRIN - Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems[24]; and

[20] FSMA s22, Schedule 2, and the Regulated Activities Order. These activities are substantially the same as set out in Regulation [2 (2)(a)].
[21] APER 2.1.2P
[22] COND 2.5.7(10) G
[23] DEPP 6.2.3 G
[24] PRIN 2.1.1 R

- SYSC - Chapters 2, 3 and 6 set out particular requirements relating to senior management responsibilities, and for systems and controls processes, including specifically addressing the risk that the firm may be used to further financial crime. SYSC 6.3.1 R to SYSC 6.3.10 G (and SYSC 6.3) cover systems and controls requirements in relation to money laundering[25].

21. The FCA Handbook of rules and guidance contains high level standards that apply, with some exceptions, to all FCA-regulated firms, (for example, the FCA Principles for Businesses, COND and SYSC) and to all approved persons (for example, the Statements of Principle and Code of Practice for Approved Persons). SYSC sets out particular rules relating to senior management responsibilities, and for systems and controls processes. Some of these rules focus on the management and control of risk[26], and specifically require appropriate systems and controls over the management of money laundering risk[27].

22. The FCA has also issued a publication *"Financial Crime: A Guide for Firms"* which provides practical assistance and information for firms on actions they can take to counter the risk that they might be used to further financial crime.

[25] SYSC 2 and 3
[26] SYSC 6.1.1 R
[27] SYSC 6.3.7 G