Anti-money Laundering Compliance for Law Firms

SUSANNAH COGMAN, JOHN R TAYLOR & DAVID McCLOSKEY
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is published by Ark Group
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# Contents

Executive summary.................................................................................................................................................. VII

About the authors and contributors ......................................................................................................................... IX

Chapter 1: Review of the current anti-money laundering landscape............................................................. 1
  Introduction and context........................................................................................................................................... 1
  Overview of the UK anti-money laundering regime.......................................................................................... 2
  Proceeds of Crime Act 2002................................................................................................................................. 4
  Money Laundering Regulations 2007 .................................................................................................................. 11

Chapter 2: The revised FATF Recommendations and the proposed Fourth EU Money Laundering Directive .................................................................................................................. 17
  The context to the Fourth Directive and timeline for implementation.......................................................... 17
  The revised Financial Action Task Force Recommendations...................................................................... 18
  Key proposals in the Fourth Directive............................................................................................................. 20
  Conclusion............................................................................................................................................................ 27

Chapter 3: Client due diligence – Identifying high risk clients and suspicious activity............................... 29
  Client risk............................................................................................................................................................ 32
  Services risk......................................................................................................................................................... 33
  Country or geographic risk................................................................................................................................. 34
  CDD procedures................................................................................................................................................ 34

Chapter 4: Navigating the counter-terrorist financing and sanctions regimes.......................................... 39
  Introduction.......................................................................................................................................................... 39
  Terrorism and terrorist financing offences....................................................................................................... 40
  Terrorist asset freezes – Introduction............................................................................................................ 43
  Legal basis of sanctions measures.................................................................................................................. 43
  The nature of the prohibitions imposed by asset freezing regimes............................................................... 45
  Compliance and due diligence.......................................................................................................................... 46
  Obligations to report .......................................................................................................................................... 47
  Providing information on request...................................................................................................................... 49
Chapter 5: The complexities of legal professional privilege as it applies to money laundering and terrorist financing suspicions

- Common law legal professional privilege ............................................................... 51
- Legal professional privilege in international anti-money laundering standards –
  - The FATF 40 Recommendations and the Third Directive ......................................... 53
- Statutory privilege as an exemption to reporting obligations in the
  - UK regulated sector .................................................................................................. 54
- Terrorism suspicions – Privilege and reporting obligations outside the
  - UK regulated sector .................................................................................................. 55
- Common law privilege and the substantive money laundering and
terrorist financing offences ......................................................................................... 56
- Statutory privilege exemptions – Tipping off and prejudicing an investigation .......... 58

Chapter 6: Lessons learned – Recent cases ............................................................. 61
- Convicted lawyers – Common factors ................................................................. 61
- Causes of criminal behaviour .............................................................................. 62
- Organisational failures ....................................................................................... 63
- Criminal property ............................................................................................... 63
- Timing of offences .............................................................................................. 64
- Dishonesty by solicitors – Disciplinary tribunal .................................................. 64
- Delay and direct action ...................................................................................... 65
- Lessons from the financial services industry ....................................................... 66
- Tipping off ........................................................................................................... 67
- Summary ............................................................................................................. 69

Chapter 7: Law enforcement ..................................................................................... 71
- The legal and regulatory environment – Professional obligations under the
  - SRA Code of Conduct 2011 .................................................................................. 71
- Dealing with law enforcement requests ................................................................ 74
- Case studies ........................................................................................................ 78

Chapter 8: Developing a culture of compliance ....................................................... 81
- Key principles ....................................................................................................... 81
- Maintaining an ethical culture – Key issues .......................................................... 82
- Preventing unethical behaviour within a firm ....................................................... 82
- The impact of socialisation processes .................................................................. 83
- Fostering an ethical culture – Key principles for management to consider ............ 85
- Instilling the Code of Ethics ................................................................................ 86

Chapter 9: Politically exposed persons and client monitoring ................................. 89
- Key principles ....................................................................................................... 89
- Politically exposed persons .................................................................................. 90
- PEPs – The case of James Ibori ............................................................................ 91
- Ongoing monitoring of client activity .................................................................... 92
- Risk management procedures – File reviews ....................................................... 93
Appendix: References ........................................................................................................... 95
Chapter 1: Review of the current anti-money laundering landscape........................................ 95
Chapter 4: Navigating the counter-terrorist financing and sanctions regimes..................... 97
Chapter 5: The complexities of legal professional privilege as it applies to
money laundering and terrorist financing suspicions......................................................... 98
Chapter 7: Law enforcement.............................................................................................. 100
Executive summary

MONEY LAUNDERING can be a complex and difficult issue for lawyers, and there are many traps and pitfalls for the unwary. With the continued public and regulatory focus on corruption, money laundering and terrorist financing, and anticipated changes to the anti-money laundering regime due to the revised Financial Action Task Force (FATF) Recommendations and the European Commission’s proposed Fourth EU Money Laundering Directive, firms will be under increasing pressure to ensure that an effective anti-money laundering programme is embedded in their culture and working practices.

This report addresses the practical issues legal firms may have to deal with in order to ensure compliance with all relevant rules and regulations. It looks past the bare legal requirements, and attempts to tackle some of the more difficult and complex issues lawyers have to contend with when dealing with client affairs. This report is an essential practical guide, designed to provide information and advice that will help the practitioner avoid some of the many pitfalls contained in the rules, and to ensure that their firm is both compliant with the legislation and, more importantly, alert to the dangers some forms of client activity can present.

Chapter 1 provides an overview of the current UK anti-money laundering regime. It includes a summary of the provisions of the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007, setting out the various offences, reporting and compliance obligations to which law firms are subject. This chapter provides the framework within which the more detailed issues in subsequent chapters can be considered.

Chapter 2 looks to forthcoming changes to the anti-money laundering regime, and discusses the European Commission’s proposals for a fourth money laundering directive. The Directive will implement the Financial Action Task Force’s revised Recommendations published in February 2012, and is likely to lead to revisions in the Money Laundering Regulations 2007. The changes that are most likely to impact on solicitors in practice are considered.

It is essential that firms that provide services in the regulated sector carry out client due diligence (CDD) procedures. However, there is often a danger of these being formalised into a tick-box checklist approach carried out hastily so the real legal work can begin. Chapter 3 provides an overview of a risk-based approach to CDD. It outlines an approach for identifying high risk areas, and classifying clients in such a way that the appropriate level of CDD checks can be carried out. This allows firms to isolate high risk cases and monitor client activity, so that the risks of becoming embroiled in money laundering activities are reduced to an acceptable level.

A number of overlapping regimes impose obligations on law firms in respect of counter-terrorist financing and financial sanctions. This is an area which is likely to increase in importance, given the continued
foreign policy focus on terrorism, and the increased use of country-specific sanctions as a foreign policy tool. Chapter 4 provides an overview of solicitors’ reporting obligations in respect of terrorist financing, and guidance on how financial sanctions, in particular, asset freezing measures, will impact their work.

Solicitors and their money laundering reporting officers can face difficulties in reconciling their obligation to report suspicions of money laundering with the requirement to preserve their clients’ legal professional privilege. Lawyers’ actions will be dictated by the extent to which common law or statutory privilege (or both) applies to the information or other material on which their suspicions are based, as well as whether continuing to act on the client’s instructions would (absent a report) involve the commission of a money laundering or terrorist financing offence. Chapter 5 examines the privilege exemptions that apply to the various reporting requirements to which solicitors are subject, and offers guidance on how to navigate this complex area.

Chapter 6 provides an overview of several cases that have served to clarify aspects of the law, in relation to the criminal conviction of lawyers involved with money laundering. In addition, it reviews decisions of the court that interpret key aspects of the law, such as when assets actually become criminal property and when involvement becomes criminal, which serve to interpret the principles of the legislation. The lessons to be learned from convictions overturned on appeal are considered, as these have relevance to practising lawyers, and a decision regarding Bryant that relates directly to solicitors’ disciplinary proceedings. Lessons to be learned from the financial sector are also discussed.

Chapter 7 examines the relevant issues in relation to a solicitor’s practice that is approached by law enforcement conducting a money laundering investigation into a client, or the firm itself. It explains the legal and regulatory environment to which firms are subject, lists some of the powers investigators can use to obtain information under compulsion, and provides some practical advice on how to respond to requests for information.

Chapter 8 looks at management issues in law firms. Clearly there is a requirement that staff, particularly client facing staff, be alert to the possibilities of being involved in money laundering. This requires senior management to examine the culture of their firm and to consider how staff can become involved in dysfunctional behaviour because of the organisational culture, rather than by deliberately performing acts they know to be criminal. This chapter looks at some of the influences that make ‘good people do bad things’, and suggests ways in which this can be prevented.

The problems caused by PEPs are well known in principle, however, Chapter 9 provides key guidance on how a firm should be approached by such an individual in order to protect itself from potential problems. This chapter also considers the impact of the Bribery Act 2010 definition of ‘adequate procedures’, and how these equate to anti-money laundering procedures established by law firms.

This final chapter also discusses how a firm monitors ongoing activity to ensure that a client’s status within the firm has not changed, and the client is not perverting arrangements put in place for legitimate business, for a more sinister purpose. Included in this chapter, is an expert view on monitoring changes in clients’ circumstances, and what legal firms need to do in order to maintain regulatory compliance.
About the authors and contributors

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Susannah is a partner at Herbert Smith Freehills and specialises in financial crime and related regulatory work. She advises corporates, financial institutions, and professional services firms in connection with anti-money laundering, corruption, sanctions and fraud issues, both contentious and non-contentious, and speaks widely on these areas. She has considerable experience of conducting internal investigations for clients, as well as advising on external investigations by the Serious Fraud Office, Financial Services Authority and others, and related disputes. Her extensive compliance experience includes advising on all aspects of the UK’s anti-money laundering regime, including in connection with the scope of the regime, identification, training, suspicious transaction reporting, civil liability issues, and tipping off.
Ranked by Chambers UK, 2012 as a band one leading individual for corporate crime, clients describe Susannah as ‘excellent, technically superb and always available at short notice’. She is a consultant editor of the Lloyds Law Reports: Financial Crime series and publishes in a range of journals. She is a regular speaker at the British Bankers’ Association newly appointed MLRO induction workshops, anti-corruption workshops, and other events.

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Anna is a senior associate in the Corporate Crime and Investigations department at Herbert Smith Freehills. She has a background in contentious white collar criminal defence, and advises across a broad spectrum of criminal and regulatory liability. She holds a doctorate in anti-money laundering regulation and sits on the Law Society’s EU Committee, advising on EU criminal law.

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Elizabeth advises and represents clients on financial crime matters, in particular in respect of money laundering, fraud and corruption. She also advises on sanctions issues and financial crime compliance programmes, including assisting with the preparation of policies and procedures.
Elizabeth has experience acting in a variety of internal investigations for clients, in addition to advising on investigations conducted by, or at the request of, the SFO and HMRC.

About the firm
Herbert Smith Freehills is one of the world’s leading law firms, advising organisations across all major regions of the globe. With 2,800 lawyers in offices spanning Asia, Australia, Europe, the Middle East and the US, clients trust the firm with their most important transactions, disputes and projects. The firm combines pre-eminence in dispute resolution, an outstanding reputation for high-value transactional advice, and expertise in a number of global industry sectors, including financial services, energy and mining.
Herbert Smith Freehills’ corporate crime and investigations practice advises clients on all aspects of corporate criminal law. The team has a market-leading reputation, with particular expertise in corruption, fraud, money laundering and sanctions, advising on both non-contentious (compliance) and contentious (investigations, disputes and prosecution) matters. The team has acted for governments/regulators, worked with and acted as compliance monitors, conducts internal investigations, sets up and advises on all aspects of financial crime compliance programmes and acts for financial institutions and corporate clients in respect of actions by investigative agencies across multiple jurisdictions. The specialist team is based across the firm’s offices in Europe, Asia Pacific and the Middle East.

John R Taylor, consultant
Trained in Hull as a chartered accountant, John worked for many years in professional practice as an auditor, company advisor and financial investigator. After two years with PriceWaterhouseCoopers in Leeds, John left to become financial director of a public limited company involved in vocational training in the clothing industry, which taught him what it was like ‘on the other side of the fence’.

After six years at the financial helm of the business, there were no worlds left to conquer professionally, so seeking a new challenge, John left the safe haven of full-time employment for the choppy waters of self-employment, working as a freelance trainer and developer of training programmes.

The academic world beckoned and after a stint at Bradford College, teaching students from degree level to individuals with special needs, John joined Leeds Metropolitan University as a senior lecturer in accounting and finance.

During this period, John developed a special interest in the causes of and remedies for dysfunctional behaviour in organisations. He contributed to research into how poor management practice and flawed decision making contributes to the development of unethical cultures in organisations and increases in corruption, fraud and other types of white collar crime. He is presently researching how systemic failures can result in flawed and inept decision making in organisations.

John, a freelance lecturer and author, writes extensively on corporate culture, fraud and money laundering. He is the author of several books including Forensic Accounting (the only book on the topic written specifically for the UK), Auditing, an industry standard textbook on the topic and, most recently, Corporate Governance, Ethics and CSR (with Dr Justine Simpson) published in January 2013.

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David is a partner in the Business Crime Department at Peters & Peters Solicitors, and joined the firm in 1998 after training and qualifying as an attorney in South Africa.

David has considerable experience in acting for individual and corporate clients in a wide range of business crime and regulatory investigations. In particular, David advises clients on fraud investigations, money laundering, insider dealing/market abuse, sanctions, and other fraud and corruption matters in the UK and overseas. David is frequently ranked as a leading lawyer in his areas of expertise by the foremost UK legal directories. His high profile cases include: successfully representing a South African billionaire on an appeal against a cash seizure, and representing an Icelandic businessman in a successful challenge to an SFO search warrant.
David writes and lectures regularly on risk management, particularly money laundering compliance and fraud prevention. Publications include *Criminal Law Review*, *Solicitors’ Journal* and *Law Society Gazette* and online. David was appointed as a member of the Law Society’s Money Laundering Task Force in March 2012.

**About the firm**

Peters & Peters Solicitors LLP is a specialist practice best known as a leading law firm in civil fraud, commercial litigation, business crime and regulatory work. It acts for governments, corporations, financial institutions, professionals, executives and high net worth individuals, and also regularly advises foreign regulators and international organisations. Many of the cases are high profile, complex and in recent years the vast majority have been international.

Peters & Peters has been ranked as ‘top tier’ by the leading legal directories across its practice areas for many years. Its key practice areas include anti-money laundering, bribery and corruption, commercial and trust litigation, corporate investigations, criminal antitrust (cartels), cross-border issues (including extradition and mutual legal assistance), economic sanctions, financial regulation, fraud (civil and criminal), insider dealing, international asset tracing and tax investigations. Peters & Peters is recognised as providing a multidisciplinary approach on behalf of its clients across both civil and business crime spectrums.