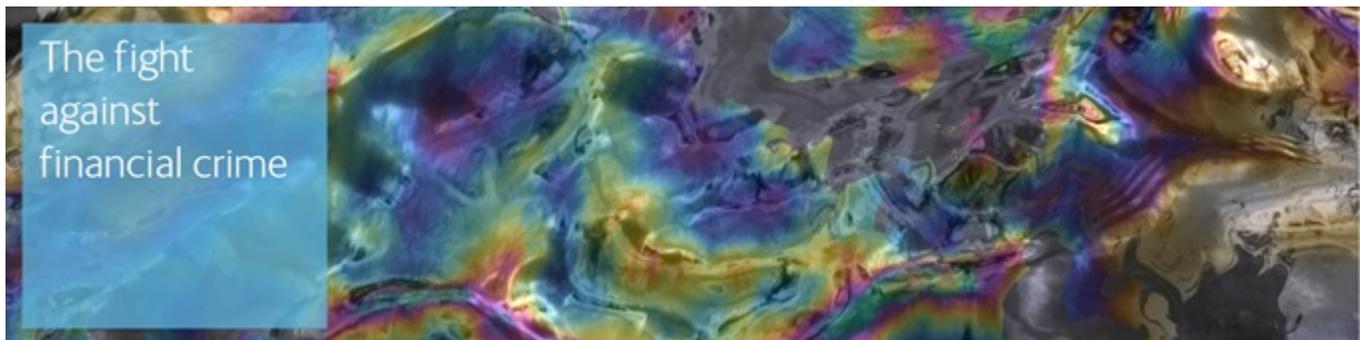


The fight against financial crime: anti-money laundering

The rate of change in the law and its enforcement in financial crime has been dramatic and global in the past few years, resulting in a regulatory minefield for many businesses.

In this series of articles, we focus on different areas of financial crime, taking an incisive look at current regulation and what we can expect over the course of 2018. In this first edition we take a look at anti-money laundering, including the recent passing of the Fifth Anti-Money Laundering Directive by the European Parliament and other developments in Asia.

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The current position

Some jurisdictions within the EU are still in the process of implementing the requirements of the Fourth Anti-Money Laundering Directive, but on 19 April 2018 the European Parliament finally voted through further revisions to the Anti-Money Laundering Directive (5MLD). This round of revisions to the EU's anti-money laundering and anti-terrorist financing regime was first proposed in July 2016, gaining impetus from terrorist attacks in mainland Europe and the Panama Papers scandal.

Europe is not alone in strengthening its laws in this area, with two key pieces of legislation having come into force in Hong Kong in March 2018, in advance of the city's next mutual evaluation by the Financial Action Task Force. 2017 was a busy year for the Securities and Futures Commission and the Hong Kong Monetary Authority, with several asset managers and brokers being reprimanded and fined, while their Responsible Officers were banned and fined. Lengthy

terms of imprisonment have also been handed down to several individuals for money laundering in recent years.

In Singapore too, there has been a renewed focus on money-laundering by the Monetary Authority of Singapore (MAS) and the Commercial Affairs Department of the Singapore Police Force. As well as establishing a steering group with Financial Institutions operating in Singapore to examine AML controls, the MAS has recently taken enforcement action for breaches of AML requirements.

Key issues to think about

In Europe, 5MLD will bring virtual currency exchange platforms and custodian wallet providers within the scope of the Directive. Virtual currency transfers are currently not monitored in any way by public authorities within the EU. As obliged entities under 4MLD, similar to financial institutions, they will become subject to the obligation to implement preventive measures such as customer due diligence and report suspicious transactions.

The legal obligations on Financial Intelligence Units (FIUs) are to be clarified by aligning the text of 4MLD with the latest international standards on the powers that FIUs should have when requesting additional information from obliged entities. The aim is to put in place an automated central registry at Member State level, allowing for the swift identification of account holders. This mechanism would be directly accessible to national FIUs, who would also be able to request supplementary information from any obliged entity and have direct access to information held by obliged entities without there having been a suspicious transaction report.

The 4MLD already establishes obligations in respect of the identification of the beneficial owners of legal entities and legal arrangements, the storing of that information and differentiated levels of access to it. 5MLD will go further by granting public access to beneficial ownership information for entities engaged in economic activities. The data to be made available to the public will be strictly limited and will only concern beneficial owners in their capacity as economic actors. The Commission also proposes to set up a direct interconnection of member state registers, which will allow competent authorities, FIUs and obliged entities to identify the beneficial owners in an easy and efficient way. This will also allow the public to access EU-wide beneficial ownership information, while those who can demonstrate a “legitimate interest” (investigative journalists?) will also have access to data on beneficial owners of trusts.

The drive for more transparency is global. In Hong Kong the Companies (Amendment) Ordinance 2018 has introduced requirements for companies to maintain registers of Persons of Significant Control. These registers will not be open to the public, but can be inspected by any PSC whose name is on the register, and law enforcement officers upon request.

What's next?

Member States will have 18 months to implement 5MLD through national legislation after it enters into force, which will occur three days after it is published in the Official Journal of the European Union. Given concerns around the security of virtual currencies and the risk of money laundering associated with them, many financial institutions will aim to introduce measures in relation to transactions involving virtual currencies in advance of 5MLD coming into force.

Another area that will attract more attention from the authorities is “transaction laundering” where criminals or terrorists launder funds through transactions via online marketplaces where goods and services are traded by participants. These sites provide an ideal opportunity for parties to layer funds through artificial transactions. There is already substantial evidence that online commerce provides vulnerabilities that are being exploited by money-launderers and enforcement agencies are likely to want more dialogue with payment service providers about ways to address this.

Update

5MLD entered into force on 09 July 2018. Governments have until 10 January 2020 to implement the changes 5MLD introduces into national law. The final text of 5MLD can be found [here](#).

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