

# AML Guidance - Section 4 - Governance & Policies / Section 8 - Training and Brexit

Thursday 25 February 2021 | 10.00am – 11.00am

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# Presenters



## **Nicola Kirby**

Money Laundering Taskforce and Senior Compliance & Ethics Lawyer and Deputy MLRO, Latham & Watkins

## **Susannah Cogman**

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## **Mark Boyle**

Policy Manager, Anti Money Laundering, Solicitors Regulation Authority

# Housekeeping



- We encourage you all to participate in today's session
- You can do this by asking questions in the chat box at the top left of the screen
- If you have any technical issues, please post these in the chat box and one of our team will respond to you via a private message
- You can also email queries to [events@lawsociety.org.uk](mailto:events@lawsociety.org.uk)

# What will we cover?



## Governance

- ✓ Roles
- ✓ Policies Controls & Procedures
  - ✓ Internal Controls
  - ✓ Training

## Brexit

- ✓ Effect on AML
- ✓ Sanctions

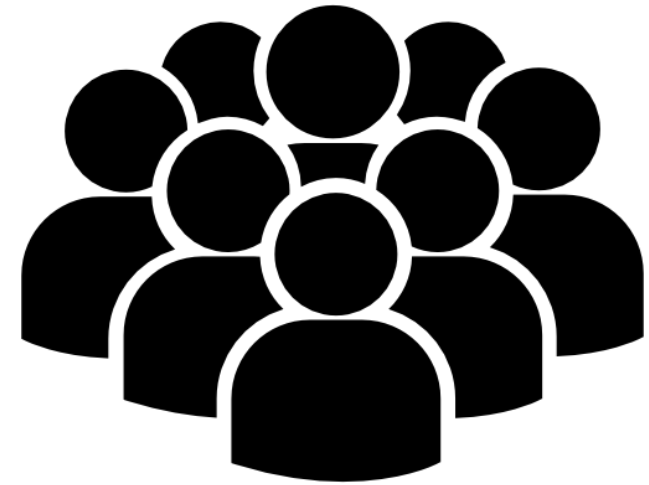


# **LSAG 2021 Sections 4 and 8 Governance, Policies Controls and Procedures and Training**

Mark Boyle  
Policy Manager: Anti-Money Laundering

# Roles: BOOMs, MLROs and MLCOs

- BOOMs - Beneficial Owners, Officers and Managers
- MLRO- Money Laundering Reporting Officers
- MLCO - Money Laundering Compliance Officers
- Senior Management



# Policies, controls and procedures

- Risk management practices
- Internal Controls
- Customer Due Diligence
- Reliance and record keeping
  
- How to spot high risk cases (unusual/complex)
- Use of new tech
- SARs
- Compliance monitoring & training



What to consider

What you must (R24) and should include

Who to train

- MLROs/MLCOs
- Agents



# Governance, Training & Brexit



## **Nicola Kirby**

Money Laundering Taskforce and Senior Compliance & Ethics Lawyer  
and Deputy MLRO, Latham & Watkins

# Policies, Controls & Procedures (PCPs)



- New Legal Sector Affinity Group (LSAG) Guidance – Chapters 4, 9 and 10.
- The Money Laundering Terrorist Finance and Transfer of Funds (Information on the Payer) Regulations 2017 (ML Regs)
- How to structure your PCPs
- Internal Controls



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# Policies, Controls & Procedures



“...to mitigate and manage effectively the risks of money laundering and terrorist financing identified in any risk assessment...”

- Proportionate to the size and nature of the business;
- Obtain approval of senior management and document this;
- Record discussions and meetings which monitor PCPs;
- Communicate PCPs and make available to employees and record steps taken;
- Record changes made to the PCPs;
- Include PCPs in training.

# Where do I start with my PCPs? The top ten...



## 1. Intro

- What is money laundering?
- Application (NB branches and subsidiaries)
- Key legislation & guidance
- Key Roles (Money Laundering Reporting Officer (MLRO)/Deputy/Money Laundering Compliance Officer (MLCO))

## 2. Risk Management

- Risk based approach
- Risk assessment for firm [suggest separate document] **Reg 18**
- Risk assessment process for clients and matters

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# PCPs

## 3. Offences & Reporting Suspicions

- Proceeds of Crime Act 2002
- Guidance on suspicion and privilege
- Red Flags
- Reporting procedure and form
- Discrepancy Reporting



# PCPs



## 4. Client Due Diligence (CDD) (Regs 27 – 38)

- Keep a separate KYC/CDD guide?
- Must include how to identify and scrutinize matters which:
  - Are complex;
  - Are unusually large;
  - Have an unusual pattern of transactions;
  - Have no apparent economic or legal purpose;
  - Are at high risk (i.e. “particularly likely”) of being related to money laundering or terrorist financing;
  - Involve products or services that might facilitate anonymity;
  - Trigger a requirement to report a suspicious activity report.
  - Include measures to assess and mitigate risks if new products, business practices (including new delivery mechanisms) or technology are adopted;

# PCPs



## 4. Client Due Diligence (CDD) (Regs 27 – 38)

- Simplified Due Diligence (SDD)
- Enhanced Due Diligence (EDD)
- Politically Exposed Persons (PEPS)
- Timing
- Chasers & Escalation
- Internal Approvals
- Ongoing monitoring
- Refreshing
- Sanctions

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# PCPs



## 5. Client Account Procedures

- Source of funds policy
- Third parties policy
- Client account form
- Client account policy

## 6. Reliance (Reg 39)

- Do you do it?
- Who can you rely on? (NB high risk countries)
- Written arrangement regarding obtaining documents and retention
- Liability stays with the firm

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# PCPs



## 7. Internal Controls (Reg 21)

Size & Nature assessment:

- Money Laundering Compliance Officer (MLCO)
- Screening
- Independent Audit

## 8. Communication & Training (Reg 24)

- Training of Agents
- Type & Frequency
- Newsletters
- Reminders, escalation and enforcement
- Records of all this

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# PCPs

## 9. Record Keeping & Destruction

- Data Privacy
- Sharing info within the group
- Retention

## 10. Monitoring & Review

- Updating the SRA - Form FA10b
- Reviewing the PCPs and communicating to the business



# Brexit



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# So What?

## 4 & 5MLD framework stands, in addition we have:

- **Sanctions and Anti-Money Laundering Act 2018 (SAMLA)**
- **Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019**
- **Main Issues:**
  - Third countries
  - Reliance
  - High risk list of countries
  - PCPs
  - 6<sup>th</sup> Anti-Money Laundering Directive (6MLD)
  - UK continues to be a member of Financial Action Taskforce (FATF).

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# Third Countries



Definition of a 'third country' becomes a country outside the UK, as opposed to outside the EEA.

- EEA nationals/clients will become third-country entities for CDD purposes
- UK becomes a third country in relation to the rest of the EEA
- Use Reliance and apply CDD in same way – as long as the requirements of that country's legislation have “an equivalent effect” to 4MLD

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# High Risk Countries List



EU Commission publishes a list of countries which have strategic deficiencies in their AML and counter-terrorism financing (CTF) regimes.

- Reg 33 requires enhanced due diligence if client is established in a high-risk third country or in relation to any relevant transaction where either of the parties to the transaction is established in a high-risk third country.
- a “high risk third country” is one listed by the EU (4MLD)

The list is still there and referred to in the MLR but EU changes will cease to have effect in UK. UK Govt. will update the lists in February after the FATF plenary.

# PCPs



Update your PCPs to take account of the Brexit changes.

- **Sanctions and Anti-Money Laundering Act 2018 (SAML)**
- **Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019**

## 6 MLD

### 6 MLD – in force since December 2020

- Regulated entities must implement by 3 June 2021;
  - 22 predicate offences defined;
  - Extended to cover aiding and abetting;
  - Extension of offences to legal persons (corporate entities);
  - Tougher penalties.
- UK has opted out of transposing the 6th Anti-Money Laundering Directive because we say that many of its requirements are already covered by existing UK law;
- BUT UK is still considering the proposed new offence of corporate liability – “failure to prevent” money laundering offence;
- Law Commission review to take place.

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# Sanctions post-Brexit

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# Brexit and sanctions

## Pre-Brexit for each EU-derived regime

### EU level

- Decision
- Regulation – source of binding obligations on firms/individuals
- Some guidance (eg Commission Opinions) re some regimes

### UK level

- Regulation(s) – enforcement, licensing, reporting obligations
- Split between financial and trade sanctions – so may be two regulations

Plus designations under domestic counter-terrorism powers

And that's a simplified way of looking at it!

# Brexit and sanctions

## Post-Brexit for each sanctions regime

Sanctions and Anti-Money Laundering Act (SAMLA)			
Regulation – eg Russia + guidance	Regulation – eg Iran + guidance	Regulation – eg global human rights + guidance	Regulation – eg Cyber + guidance
OFSI general guidance			
Consolidated List lists persons designated under all regimes			

# SAMLA: power to impose sanctions

Broad powers for UK to introduce sanctions via regulation for a range of purposes

Compliance with UN / international obligations

Prevention of terrorism

National / international security

Foreign policy objectives

Resolution of armed conflict / protection of civilians

Promoting compliance with human rights / international humanitarian law

Efforts to counter spread of WMDs

Promote respect for democracy, and rule of law

- Sanctions can take a number of forms eg **asset freezes**, **investment restrictions**, **trade sanctions** (import/export of goods/services), **travel bans**, ‘**transport sanctions**’
- Most common and most relevant to the majority of solicitors = asset freeze

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## SAMLA: what is the same?

- New regulations under SAMLA broadly similar to pre-Brexit regimes
- **Regimes:** Same jurisdictions subject to sanctions (some changes to regime names)
  - New UK “misappropriation” regime (no designated persons listed)
  - Russia restrictions amalgamated
  - Turkey / Drilling in the Eastern Mediterranean
- Broadly speaking, similar **types of restrictions** imposed under each regime
- Most common restrictions remain **asset freezes** on designated persons (“**DPs**”)
  - Compliance: checking (screening) names against list (see later slide)
- **Reporting obligations** remain:
  - Firm which provides legal or notarial services, tax advice or TCSP services by way of business
  - Based on information which comes to it in course of business
  - Knowledge/reasonable cause to suspect that: (a) person is a DP; (b) person has breached specific sanctions restrictions; plus (c) if client is a DP, funds or economic resource held for him by firm

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# SAMLA: differences

- (Minor) differences in **lists**
  - Most EU Designated Persons remain designated for UK purposes
  - But already some divergence between lists:
    - 113 EU designated persons removed from UK list on 31 December
    - UK list includes a small number of UK designations which the EU does not have
  - Need to make sure you are checking the correct list
- Differences which are **common across sanctions regimes**, eg
  - Licencing grounds and Exemptions
  - Ownership and control test
  - Relevant if you are dealing with (as client or counterparty) a DP or entity wholly or partly owned/controlled by a DP
- Differences which are **specific to particular regimes**
  - Relevant if you are doing work which could be relevant to that regime

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## Lists

- OFSI consolidated list:
  - <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>
  - All persons subject to **financial** sanctions in the UK
- UK Sanctions List:
  - <https://www.gov.uk/government/publications/the-uk-sanctions-list>
  - All persons designated under SAMLA – under any type of sanctions
  - Also details which sanctions measures apply to these persons (or ships), and in the case of non-UN derived designations, provides a UK statement of reasons for the designation

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## SAMLA: differences

- Regime specific differences: some Russia examples

EU: Annex II goods: restrictions on sale, supply, transfer, export, technical assistance or **brokering services**, financing or financial services

UK: Energy-related goods: supply or delivery, export, making available, financial services or funds, technical assistance or **brokering services**, financial services or funds

(i) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or of financial and technical services, including from a third country to any other third country, or  
(ii) the selling or buying of goods and technology or of financial and technical services, including where they are located in third countries for their transfer to another third country

any service to secure, or otherwise in relation to, an arrangement, including (but not limited to) -  
(a) the selection or introduction of persons as parties or potential parties to the arrangement,  
(b) the negotiation of the arrangement,  
(c) the facilitation of anything that enables the arrangement to be entered into, and  
(d) the provision of any assistance that in any way promotes or facilitates the arrangement



# SAMLA: differences

- Regime specific differences: some Russia examples

Sectoral sanctions (loans/credit, transferrable securities and money market instruments)	Sectoral sanctions (loans/credit, transferrable securities and money market instruments)
Entities covered: (a) listed entities, (b) <b>non-EU</b> >50% subs, (c) persons acting on behalf of or at the direction of (a) or (b)	Entities covered: Entities covered: (a) listed entities, (b) <b>non-UK</b> >50% subs, (c) persons acting on behalf of or at the direction of (a) or (b) <b>New ownership/control test</b> applies to (b)
Exemption re loans/credit to provide financing for non-prohibited imports or exports of goods and non-financial services <b>between the EU and any third State</b>	Exemption re loans/credit for non-prohibited trade: (a) export of goods <b>from the UK</b> ; (b) import of goods <b>to the UK</b> ; (c) non-financial services provided - (i) from a place in the UK to a non-UK country, or (ii) from a non-UK country to a place in the UK

# Compliance points

- **Lists**
  - Lists broadly the same as EU but not identical
  - Screen UK
  - Screen both? Banks, insurance, etc
- If you are doing **work which could engage a particular regime**
  - Check the detail of the regime
  - Licences - Pre-Brexit UK licences generally remain valid (in UK), but consider if EU licences need replacement with UK / vice versa
- Contractual language (advice to clients) – EU or UK or both?
- Blocking regulation – brought into UK under Withdrawal Act
- Possible divergence over time



# Questions

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