

# Anti-money Laundering Compliance for Law Firms

2nd edition



EDITED BY FRANCESCA RAMADAN

**Head of events and books**

Leah Darbyshire

**Commissioning editor**

Alex Davies

**Editorial assistant**

Francesca Ramadan

Published by ARK Group:

UK, Europe and Asia office  
5th Floor, 10 Whitechapel High Street  
London, E1 8QS  
United Kingdom  
Tel: +44(0) 207 566 5792  
publishing@ark-group.com

North America office  
4408 N. Rockwood Drive, Suite 150  
Peoria IL 61614  
United States  
Tel: +1 (309) 495 2853  
publishingna@ark-group.com

www.ark-group.com

Layout by Susie Bell, www.f-12.co.uk

Printed by Canon (UK) Ltd, Cockshot Hill, Reigate, RH2 8BF, United Kingdom

ISBN: 978-1-78358-360-7

A catalogue record for this book is available from the British Library

© 2019 ARK Group

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, except in accordance with the provisions of the Copyright, Designs and Patents Act 1988 or under terms of a licence issued by the Copyright Licensing Agency in respect of photocopying and/or reprographic reproduction. Application for permission for other use of copyright material, including permission to reproduce extracts in other published works, should be made in writing to the publishers. Full acknowledgement of author, publisher, and source must be given.

**DISCLAIMER**

This publication is intended as a general guide only. The information and opinions it contains are not intended to provide legal advice. The publishers bear no responsibility for any errors or omissions contained herein.

ARK Group is a division of Wilmington plc. The company is registered in England & Wales with company number 2931372 GB. Registered office: 5th Floor, 10 Whitechapel High Street, London, E1 8QS.

VAT Number: GB 899 3725 51

# Contents

Executive summary.....	v
About the authors.....	ix
Chapter 1: Reviewing the AML landscape .....	
<i>By Ruth Paley, principal associate at Eversheds Sutherland</i>	
Chapter 2: Evidencing compliance with the key requirements of MLR 2017 – practical help .....	
<i>By Ruth Paley and Zia Ullah, principal associate and head of corporate crime and investigations at Eversheds Sutherland</i>	
Chapter 3: Politically exposed persons and their definition .....	
<i>By Anita Clifford, principal associate at Bright Line Law</i>	
Chapter 4: Source of funds and source of wealth enquiries .....	
<i>By Amy Bell, director of Teal Compliance</i>	
Chapter 5: Managing the risks – the need for compliance strategies .....	
<i>By Tracey Calvert, director of Oakalls Consultancy</i>	
Chapter 6: The UK Criminal Finances Act 2017 and its wider implications ...	
<i>By Michael Ruck, partner at TLT LLP, and Angela Craven, associate at TLT LLP</i>	
Chapter 7: Beneficial ownership provisions of the Fourth and Fifth Directives .....	
<i>By Ian Hargreaves and Deirdre Lyons Le Croy, partner and associate at Covington &amp; Burling LLP</i>	

Contents

Chapter 8: Sanctions and their implications for law firms. . . . .  
*By Robyn Brown, associate at Eversheds Sutherland*

Chapter 9: The proposed Fifth EU Money Laundering Directive. . . . .  
*By Ruth Paley and Zia Ullah, principal associate and head of corporate crime  
and investigations at Eversheds Sutherland*

# Executive summary

The European Union Fourth Anti-Money Laundering Directive is the most sweeping AML legislation ever to have been introduced in Europe. It aims to strengthen the existing rules, prioritising the fight against tax avoidance, money laundering and terrorism financing by reinforcing the necessity of measures such as risk assessments, setting clear requirements about beneficial ownership, and expanding the definition of a politically exposed person. This second edition of *Anti-money Laundering Compliance for Law Firms* is intended as both handbook and guide, advising on practical implementation of the Directive's mandates and assist European law firms in remaining compliant. It will also act as a best-practice toolkit for firms practising beyond Europe. Featuring contributions from a range of experts in the field – from barristers specialising in financial crime to compliance experts and consultants – this timely publication provides the latest intelligence on successful adherence to the Fourth Directive, along with an anticipatory exploration into the possible effects of the upcoming Fifth Directive and changes within the regulatory landscape.

Our first chapter contains a review of the current anti-money laundering landscape, authored by Ruth Paley, principal associate at Eversheds Sutherland and specialist in corporate crime and financial regulation and compliance. The key requirements of the regulations – including those addressing policies, controls, training and due diligence – are addressed and outlined, setting the scene and providing a solid foundation from which to explore the implications and impact of the Fourth Directive.

In order to be compliant with the Fourth Directive, it is now essential that all firms undertake large and comprehensive risk assessments. However, it was discovered as part of an industry-wide review by the Solicitors Regulation Authority (SRA), which covers England and Wales, that only a small percentage of firms surveyed had a firm-wide assessment in place – a mere 11 out of the total 50 sampled. In order

to help launch this fundamental measure, in chapter two Ruth Paley and Zia Ullah – head of corporate crime and investigations at Eversheds Sutherland – outline some practical guidance and helpful tips, drawn from real-world implementation. Firms of any size and at any stage of the assessment process will benefit from this detailed advice.

Clarification of the bounds of a politically exposed person (PEP) has been high on the regulatory agenda. The changes to the definition of a PEP under the Fourth Directive are discussed in chapter three, as a means of navigating this complex subject. Further changes are also on the horizon. Under the Fifth Directive – which the United Kingdom has committed to transposing – states will be obliged to publish a list of prominent public functions that qualify for PEP status, as well as the international organisations that give rise to a PEP. Against this background, chapter three – by Anita Clifford, principal associate at Bright Line Law – traces the Financial Action Task Force’s rationale behind singling out PEPs and their associates and considers in detail the anti-money laundering duties that arise when a business relationship is established with such a person, with an eye on the practicalities of compliance.

It is a regulatory requirement to consider the source of funds and wealth in transactions, particularly under the Fourth Directive, which place even lower thresholds on the amount of goods exchanged necessary to trigger a customer due diligence process. Chapter four – authored by Amy Bell, director of Teal Compliance and chair of the Law Society’s Money Laundering Task Force – delves into the requirements to conduct customer due diligence, exploring not only what is outlined in the legislation but also what is omitted yet equally important to consider. Practical examples of compliance and disciplinary cases are also supplemented as a constructive foundation for implementation.

In chapter five, Tracey Calvert – director of Oakalls Consultancy and a highly experienced regulatory compliance specialist – outlines the regulatory environment for solicitors and firms authorised by the Solicitors Regulation Authority, with an eye to those matters relevant in a wider European context. The “compliance pinch points” – those seemingly inconsequential behaviours or issues that may cause problems for a firm in the future – are highlighted, alongside the compliance and risk management solutions available to tackle them.

Chapter six – authored by Michael Ruck, a partner in the financial services team of TLT LLP – covers the UK Criminal Finances Act 2017, which incorporates tax evasion in other jurisdictions and proceeds

earned from criminal activity abroad. The new criminal offence for corporates of failing to prevent tax evasion, unexplained wealth orders (UWOs), and changes to the SAR regime are all explored. This instructive case study on the UK legislation also covers the extra territorial reach of the provisions within the Act, containing valuable learnings for other countries; the breadth of its applicability makes this chapter essential reading for all.

Chapter seven will outline the beneficial ownership provisions of the Fourth and Fifth Money Laundering Directives. Authors Ian Hargreaves and Deidre Lyons Le Croy – a partner and associate, respectively, in white collar team in the London office of Covington & Burling LLP – discuss whether the threshold of 25 percent is fit for purpose; Member states’ discretion to decide what “legal arrangements” should be registered; and the appetite of the Department for Business, Energy and Industrial Strategy for creating a register of partnerships, alongside other topical issues.

The sanctions landscape is complex and prone to continuous disruption and transformation, which can make it difficult for law firms to remain compliant. In chapter eight, Robyn Brown – an associate within the financial services disputes and investigations group at Eversheds Sutherland – delves into this complicated subject, with an eye towards practical compliance issues and recent developments and their implications, including the divergence between US and EU foreign policy agendas. Constructive and applicable guidance will also be provided, including tips on the creation of an internal compliance framework, alongside a deep dive into recent legislation.

Our final chapter looks ahead to the proposed Fifth Directive and what this may mean for law firms. Authored by Ruth Paley and Zia Ullah of Eversheds Sutherland, the context for these new regulations and the timeline for implementation will be explained, alongside a focus on the key provisions of the legislation relating to a wide range of issues, including high-risk individuals and PEPs, information gathering and sharing, and currency and money products. This will provide a valuable horizon scan for any firm readying itself to stay compliant and current.





## About the authors

**Amy Bell** is a compliance consultant with a passion for helping firms adapt to the changing legal landscape. She has 13 years' experience in working with law firms, and in 2017 launched Amy Bell Compliance Limited. Through consultancy with partners, and by delivering training, she provides support for everyone in the firm helping them to understand compliance and how to apply risk management principles to improve client service and deliver efficiencies. She is a member of the Law Society's Money Laundering Task Force, where she represents the solicitors profession at government and in Europe.

**Robyn Brown** is an associate at Eversheds Sutherland LLP, within the financial services disputes and investigations group. She joined the firm after a number of years working in treasury and finance for a top five UK Building Society. She has experience in all areas of financial crime, including international financial sanctions, fraud, anti-money laundering and anti-bribery & corruption. She regularly advises regulated and non-regulated corporate clients on financial crime compliance, and also has experience in defending corporate clients in respect of regulatory investigations and enforcement. Robyn conducts audits and risk assessments upon AML and sanctions control frameworks at various financial institutions, and was previously acting head of sanctions for a Japanese Investment Bank. Her recent experience includes assisting a large technology company with its sanctions compliance program following an internal investigation and remediation project and delivering comprehensive sanctions training to a large investment bank.

**Tracey Calvert** is a lawyer and the director of Oakalls Consultancy Limited. She is a regulatory, compliance and ethics specialist, providing a variety of advisory services to members of the solicitor's profession. She is a regular speaker and trainer on these topics and has delivered presentations both within the UK and internationally. She is an officer

of the International Bar Association's Professional Ethics Committee and a board member of both the Wilmington Group's Legal Compliance Association and the Law Society's Legal Compliance Bulletin. Tracey was previously employed by the Law Society and the SRA as a senior ethics adviser and a policy executive.

**Anita Clifford** is a barrister at London's Bright Line Law and a solicitor admitted to practice in Australia. Her practice centres on criminal and civil cases involving money laundering, fraud and asset freezing. Additionally, Anita advises firms on anti-money laundering issues, including the development of policies and procedures. Anita speaks regularly on anti-money laundering matters and is the author of peer-reviewed articles on aspects of financial crime. In 2018, she worked with the Council of Europe to deliver anti-money laundering training in the Republic of Moldova and Georgia.

**Angela Craven** is an associate in the investigations and financial crime team at TLT LLP. Angela has experience in undertaking regulatory investigations and advises clients on various aspects of regulatory compliance, governance and disclosures, including those relating to Anti-Bribery and Corruption, Anti-Money Laundering and the Criminal Finances Act. She also has experience of defending both corporate and individual clients. Angela deals with investigations and criminal proceedings commenced by the major enforcement bodies, including – amongst others – the Crown Prosecution Service, the Financial Conduct Authority, the National Crime Agency, the Serious Fraud Office, and Her Majesty's Revenue and Customs.

**Ian Hargreaves** is a partner in white collar team in the London office of Covington & Burling LLP. Ian advises clients on major fraud – both civil and criminal elements, asset tracing and recovery, bribery and corruption, money laundering, modern slavery, sanctions, and investigations/compliance work. He also has experience in corporate and commercial governance and risk management as well as commercial disputes and cybercrime. Ian frequently speaks at legal conferences on issues such as bribery and corruption and money laundering. He is also often quoted in the press and has written several articles on these issues together with cybercrime and modern slavery.

**Deirdre Lyons Le Croy** is an associate in the white collar team in the London office of Covington & Burling LLP. Deirdre has advised clients in

relation to enforcement actions, internal investigations and compliance programmes concerning fraud and corruption, anti-money laundering, export controls and economic sanctions, and modern slavery. She is a frequent writer on these issues in legal publications. In 2016, Deirdre acted on the landmark *R v Jogee* and *R v Ruddock* case. In addition, Deirdre has also worked as an international regulatory advisor to the Corporation of Lloyd's of London, where she managed risks arising in Africa and Latin America concerning corruption, money laundering, sanctions, financial regulation, and market access. Deirdre is also an ambassador for Wolfson College, University of Cambridge.

**Ruth Paley** is of counsel at Eversheds Sutherland in the corporate crime & investigations group, with twelve years' experience at the London Bar where she was ranked in Chambers & Partners. She maintains a highly specialist corporate and financial crime practice, with extensive experience in the white collar, financial regulatory and compliance sphere. She is frequently engaged to provide strategic advice and representation to a range of multinationals, financial institutions and individuals. Recent work includes undertaking a detailed and complex AML review in respect of a series of suspicious transactions for a European bank and preparing a comprehensive AML risk assessment under the Money Laundering Regulations 2017 for a regulated Global Top 20 law firm.

**Michael Ruck** is a partner in TLT's financial services team in London. Michael previously spent four and a half years at another City law firm in the corporate crime, investigations and enforcement team; prior to that, he spent almost six years working in the FCA's Enforcement and Market Oversight Division. Michael is a highly experienced investigations lawyer, with a broad range of experience including advisory, regulatory liaison and large-scale, complex and multi-jurisdictional investigations. His experience spans various regulatory issues and he has worked closely with a number of UK and foreign regulators, including the FCA, SFO, ICO, DOJ and IRS. Michael has a deep understanding of a wide range of regulatory issues and procedures, making him a trusted advisor to his clients, often at board level.

**Zia Ullah** is head of the corporate crime and investigations group in Eversheds Sutherland's financial services disputes and investigations team, specialising in international sanctions, AML and ABC. He advises on all aspects of financial crime compliance and was previously the

About the authors

global head of Sanctions at Barclays. He is recognised by Chambers and Partners as a “Leader in the Field” of corporate crime and investigations. His relevant skills and experience include acting on behalf of Barclays in the reported case of *Hmicho v Barclays Bank* – the lead case on ownership and control in relation to EU and UK Sanctions – and supporting a global, UK-headquartered bank with enhancements to its sanctions compliance processes.