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ANTI-MONEY LAUNDERING: GLOBAL DEVELOPMENTS AND THEIR IMPACT ON BUSINESS

— THOUGHT LEADERSHIP

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Global efforts to enhance anti-money laundering (AML) measures to combat financial crime are increasing. In this extract from a recent Clifford Chance webinar, we look at the latest AML trends in the EU, US, UK and Singapore, what they mean for business and compliance processes and provide some practical suggestions for adapting to them.

"Increasingly, AML regulation and enforcement is cross border," says Partner David DiBari, head of Clifford Chance's Regulatory Investigations and Financial Crime Group for the Americas region. "Recent years have seen major multinational AML-driven investigations such as the 1MDB case, which implicated billions of dollars in transactions across Europe, Asia, the Middle East and the US and demonstrated the confluence between money laundering and public corruption, and the multiple AML enforcement actions in the Baltics, which may have been the impetus behind regulatory developments in the EU."

The EU AML Package – a change in the EU's approach

The adoption in May 2024 of the EU AML Package represents a significant and structural change in the EU's approach to fighting money laundering. Since the first AML Directive was issued by the EU in 1991, the AML framework in the EU had been continuously tightened and extended. However, the EU AML framework consisted of EU Directives, which had to be implemented into national laws of the Member States, opening room for deviating interpretation and implementation of AML rules across the EU.

"The EU AML Package reshapes the regulatory, institutional and supervisory AML framework – in particular, it establishes a Single AML Rulebook directly applicable in all Member States and an EU AML Authority (AMLA) leading an integrated and more centralised EU AML supervisory system with AML supervision at EU level, which is to some extent similar to the existing banking supervisory system in the EU," says Counsel Gerson Raiser, who is based in Frankfurt.

The EU AML Package consists in particular of three EU Regulations which are directly applicable within the Member States (i.e., do not require implementation into national laws) and one EU Directive to be implemented by the Member States:

- **Regulation (EU) 2024/1620** The EU Regulation establishing AMLA (AMLAR) – this is the centrepiece of the reform, creating a new AML supervisory authority at EU level, which will begin operations in mid-2025 and be based in Frankfurt.

- **Regulation (EU) 2024/1624** (AMLR) The EU Regulation on money laundering prevention. This is the new Single AML Rulebook, which is a huge step forward, establishing a wide range of uniform AML requirements for obliged entities. The Regulation aims at fully harmonising money laundering prevention across the EU. This shall avoid inconsistent implementation in different Member States, which to some extent created burdensome issues in practice, such as in relation to the determination of beneficial owners, where some Member States have been applying different interpretations. Large

parts of the previous AML Directives have now been reshaped in the AML Regulation. These new rules will start to apply in July 2027.

- **Directive (EU) 2024/1640** A new AML Directive (AMLD 6) which sets out requirements for the systems for money laundering prevention in the Member States, such as requirements for national AML risk analyses or beneficial ownership registers.

- **Regulation (EU) 2023/1113** A revision of the 2015 Regulation on Transfers of Funds (which was adopted already in 2023); it aims at making it possible to also trace transfers of crypto-assets.

What will the EU AML Authority do and how?

Overall, AMLA will be responsible for developing a harmonised AML supervision mechanism for supervision of any obliged entities. For that purpose, AMLA will prepare technical standards (to be adopted by the EU Commission) and issue guidelines and recommendations specifying AML rules and supervision, and it will also coordinate and support national supervisors and national Financial Intelligence Units.

However, in addition, AMLA will have direct supervisory powers over certain "selected obliged entities" from the financial sector and will be indirectly supervising other financial-sector entities and involved in the oversight of non-financial-sector entities.

Direct supervision

Direct supervision will concern (i) credit or financial institutions (including also collective investment undertakings, life insurances and crypto-asset service providers) or respective groups at the highest consolidation level in the EU; (ii) which operate in at least six Member States with establishments or cross-border; and (iii) whose AML risk profile has been classified as high by AMLA in a specific selection process.

There will be a periodic selection by AMLA every three years, and the first selection process will be conducted in 2027. Initially, direct supervision will be limited to 40 selected entities, which will be subject to direct supervision as of 2028. For such selected obliged entities, AMLA will be the body to talk to. They will be directly supervised by way of joint supervisory teams consisting of staff from AMLA and the national supervisors. "It's still difficult to tell which entities will in fact be amongst those selected, but I would assume that AMLA will want to have direct supervision over the big shots in the financial market," says Raiser.

AMLA's supervisory powers for these selected obliged entities include, amongst others:

- Requests for information or on-site inspections.

- Various administrative measures, such as orders to implement certain corrective measures, to cease a conduct, to divest activities or to temporarily ban persons from exercising managerial functions in obliged entities.

- The power to impose pecuniary sanctions for intentional or negligent breaches of the AML Regulation or of its decisions – and AMLA must make use of this power in case of a serious, repeated or systematic breach.

- The power to impose periodic penalty payments on selected obliged entities until a relevant AMLA measure is complied with – also with retroactive effect up to the date of application of the measure.

"An aggravating point is that AMLA is generally required to publish non-anonymised information on decisions concerning penalties or certain administrative measures – so there will be naming and shaming," says Raiser.

Indirect supervision

In relation to non-selected financial-sector entities and other entities from the non-financial sector, AML supervision generally remains with the national supervisors. It is stated in the AMLA Regulation that, generally (there are some exceptions), direct interaction with obliged entities other than selected obliged entities is

under the exclusive responsibility of the competent national supervisors.

However, given the binding technical standards and the guidelines and recommendations to be issued, AMLA's supervisory approach will also indirectly extend to such other obliged entities. National supervisors will generally comply with AMLA's guidelines.

In addition, AMLA will periodically assess national financial supervisors to ensure that they have adequate resources, powers and strategies, and it will conduct peer reviews of non-financial-sector supervisors, publishing reports on such assessments and reviews. In addition, AMLA will investigate potential breaches of relevant requirements by national supervisors and issue recommendations on how to remedy such breaches. "This will very likely also lead to a stricter supervision and probably also enforcement approach by AML authorities across the Member States for entities not directly supervised by AMLA," Raiser says.

What are the key changes under the EU AML Regulation?

The EU AML Regulation stipulates the full set of requirements of obliged entities to prevent money laundering, such as, amongst others, rules concerning AML compliance functions, risk assessment, Customer Due Diligence, identification of beneficial owners or SAR filing.

Key changes include, amongst others:

- The list of "obliged entities" has been extended, now including for instance also crypto-asset service providers, crowdfunding service providers or persons trading in certain-listed high-value goods, which include, amongst others, jewellery exceeding a certain value (EUR 10,000) or aircraft exceeding a certain price (EUR 7.5 million).
- The customer due diligence (CDD) requirements have been further increased. Obliged entities must collect more data, for instance on beneficial owners, and update data more frequently within regular updating.
- The AML Regulation explicitly weaves financial sanctions compliance into the AML compliance requirements: In particular, obliged entities are required to implement controls, procedures and policies to manage risks of evasion of EU-targeted financial sanctions – i.e. EU asset freeze sanctions – and to include sanctions checks in the Customer Due Diligence Process.
- The Regulation also provides for detailed rules on beneficial ownership, which to some extent deviate from previous definitions.

AMLA Timeline

- AMLA to open its office in Frankfurt and begin operations in mid-2025, when most provisions of the AMLA Regulation will start to apply.
- In 2025 and 2026, AMLA will start proposing technical standards and consultations on implementing rules in relation to the different aspects of the AML Package.
- In July 2027, the EU AML Regulation will start to apply – so that obliged entities will need to comply with the rules as of then, and most provisions of AML Directive 6 will need to have been implemented by the Member States.
- As of July 2027, AMLA will start its first selection round of 40 selected obliged entities, which shall be completed by December 2027.
- In 2028, AMLA will start direct supervision of the selected obliged entities and be fully operational (with a planned headcount of around 430 persons).

What does this mean for institutions?

"For larger institutions operating in several Member States the changes might be helpful, as they will be able to take one consistent AML compliance approach throughout the organisation, and they will also have some level of certainty with respect to the approach of their supervisors. There may possibly be some uncertainties in an initial transition period where there may be overlapping or parallel guidance from AMLA and local supervisors, and there may also be competence questions in some Member States, for instance when it comes to prosecution of alleged violations. However, in the long run it will likely establish a level playing field for operators across the EU and might allow larger institutions to save resources," Raiser says. "However, for smaller institutions, complying with the requirements could become very difficult. The new rules include very detailed and complex legal acts which will be supplemented and further specified by technical standards and guidelines on EU level, possibly in addition to national guidance. In addition, under the AML Regulation certain AML tasks can no longer be outsourced to external service providers (such as decisions on the risk profile of a customer or SAR filing). Smaller institutions might have issues to provide resources for all that."

While there are still almost three years to go until the rules under the EU AML Regulation apply, operators of all sectors, not only the financial sector, are well advised to check to what extent the new requirements will apply to them or to what extent their existing AML compliance measures need to be updated so that they can plan in advance and provide budgets for relevant changes. "In any case, in particular due to the system involving reviews of national supervisors by AMLA, I think operators need to prepare for stricter AML supervision and also stricter enforcement of alleged AML violations, even if they are not directly supervised by AMLA, possibly in particular in sectors where supervision on national level may have so far only existed to a very limited extent," Raiser says.

New enforcement trends in the UK

The Financial Conduct Authority (FCA) – which supervises banks and financial institutions when it comes to money laundering – recently released its enforcement data for 2023/2024. "It shows a couple of interesting trends," says Michael Lyons, a Partner based in London. "The first is in relation to early intervention, and the second is in relation to whistleblowers."

For some time, the FCA has had a dedicated "interventions" team within its enforcement division. The idea is that, rather than focusing solely on enforcement action when things go wrong, that team works closely with the supervisors, seeking to proactively identify and respond to issues emerging *before* things go wrong. "The idea is that in some cases, the FCA will look to ensure firms put in place particular controls or place restrictions on taking particular action, such as ceasing to take on new clients, in order to reduce the risk of something going wrong. The FCA can either ask firms to take specific steps *voluntarily*, or they can use formal powers – so-called own-initiative outcomes – where the Enforcement team are involved. There is no question this is on the rise," says Lyons.

In the last financial year – to the end of March 2024 – there were 102 cases where the FCA achieved voluntary outcomes and 25 cases where they used formal powers. In both categories there was an increase on previous years, and in both categories a number of those cases related to money laundering and financial crime. "The fact that there are more voluntary outcomes than formal ones does not mean that all is cosy when entering into these sorts of arrangements," Lyons says. The FCA's stated strategy is to seek to agree with the firm the steps it must take to address concerns. But permission variations, for example, can have significant business

effects for a firm, such as limiting its ability to onboard particular types of customers. This was just a few years ago, used in more limited instances in enforcement cases. The FCA now has greater ability to take this sort of action without a full enforcement investigation.

"We certainly expect that firms can expect to see an increase in the use of this sort of activity in relation to financial crime issues. There is probably now a greater likelihood of close scrutiny from FCA supervisors who are seeking to fully understand the causes and the consequences of the events that lead to enforcement investigations at an earlier stage," says Lyons.

The second key issue is the role of whistleblowing as a source of enforcement risk. The FCA also has a dedicated team which receives and captures all whistleblowing disclosures from whistleblowers and refers these to relevant areas for assessment and further action. In the first half of 2024, the FCA received over 500 whistleblowing reports, of which the largest volume related to compliance, systems and controls. There were also a number of specific reports in relation to AML.

In over half of the cases reported, 52%, the FCA took some form of action to reduce harm, which may include writing to or visiting a firm, asking a firm for information or asking a firm to attest to complying with FCA rules. In 7% of cases, they have taken what they termed "significant" action, which may include enforcement action, a section 166 skilled person report or restricting a firm's permissions or an individual's approval.

In terms of "traditional enforcement," the FCA now refers to "operations" rather than "cases" (a single operation may involve multiple investigation subjects – firms and individuals). As of March 2024, there were 341 open enforcement investigations into individuals and 162 investigations into firms. Of these, by far the largest category – with 83 investigations – relates to "financial crime." There were 21 investigations that were dual track and 37 open criminal investigations. "Whereas the overall trend, however, is a decrease in the number of new investigations (only 24 new operations opened last year), it is clear that financial crime remains a key focus – over half of those opened last year were in that category. The key message is that enforcement risks remain (particularly cases with an international dimension), albeit the inevitability of sizeable AML fines year on year is perhaps not as it once was," Lyons says.

Developments in the US

Increasingly, governments are encouraging pro-active steps by financial institutions and companies to combat the use of the global financial system by illicit actors. "In the US, authorities are now regularly using the money laundering statutes and regulations as a tool to leverage enforcement of economic sanctions, export control and public corruption laws. Particularly since the Russian invasion of Ukraine, the US Treasury Financial Crimes Enforcement Network (FinCEN) has been joining in unprecedented ways to issue joint alerts with other agencies with typologies and guidance for identifying suspicious activities that may indicate evasion of sanctions, export controls or public corruption triggering reporting obligations and other steps," says DiBari.

A developing story in the US is the impact of the proliferation of whistleblower bounty programmes that cover AML, sanctions and perhaps export violations. "These programmes offer payments to whistleblowers of a minimum of 10% and up to 30% of the government's recovery, following on from the success of the Securities and Exchange Commission's (SEC's) now longstanding bounty programme often used in cases involving FCPA violations, which last year awarded almost USD 600 million in bounties," he adds. Recently, the Department of Justice announced a broad whistleblower bounty pilot programme for criminal violations that it says is intended to fill the gaps between the other programmes.

There has also been a steady wave of regulatory developments in the United States, with FinCEN advancing rule

making efforts on a variety of fronts. "FinCEN has struggled to get regulations out in the past but has been burning the midnight oil lately under pressure to fill gaps highlighted by the multilateral Financial Action Task Force," says Washington D.C.-based Counsel Jamal El-Hindi, who is a former FinCEN Deputy Director. Among these – which have a global impact – are the Investment Adviser Rule and the Corporate Transparency Act (CTA).

"With respect to the Investment Adviser Rule, FinCEN, after multiple previous attempts, is finally moving forward where it has been lagging in terms of regulatory coverage for many years," he says. "FinCEN has now finalised the Rule, which becomes effective in January 2026, covers registered investment advisers, entities that are registered with the SEC and also exempt reporting advisers who are not registered with the SEC but do a certain amount of reporting to them. With a few exceptions, the rule covers these two types of investment advisers whether they are located domestically or overseas. The investment adviser community has over a year to get in shape, but there are some areas where we hope that there will be further regulatory guidance in order for them to do so."

From a global perspective, there needs to be some awareness raising with respect to the foreign investment advisers who will come under these rules. FinCEN's definition of a foreign investment adviser is someone who is located outside the US but is providing services within the US or to any fund where there could be a US investor – and that could be a single investor. "Even if the activity is very small, foreign investment advisers may still be subject to examination, but how this will work practically given the resource constraints for the SEC and for FinCEN remains to be seen," says El-Hindi.

The CTA, which took effect in January 2024, seeks to tackle opaque company ownership structures and anonymous shell companies that are used to enable money laundering, sanctions evasion and other criminal activities. In terms of beneficial ownership, foreign beneficial owners will now be asked to provide information. "In many jurisdictions that is not uncommon, but the definition used by FinCEN is a little broader than in other parts of the world. I think we are going to see lots of folks scrambling, especially with respect to complex legal structures where you have a legal entity in Luxembourg, a legal entity in the Caymans, you know, with a certain amount of control over a US legal entity," he says. "Ensuring the information requested is accurate and up to date will be a gigantic headache, and we are gearing up to deal with answering a lot of questions."

Singapore AML case results in new enhanced laws

AML is a top enforcement priority for Singapore's regulators, and maintaining a clean and trusted financial centre is very important given its role as an international business hub. "Singapore has significantly refined its AML laws and is prosecuting AML cases after many private banks in Singapore were embroiled in the high-profile 1MDB scandal a few years ago, which resulted in negative press and poor ratings from the Financial Action Task Force (FATF)," says Janice Goh, a Partner at Cavenagh Law LLP. Clifford Chance Asia is a formal law alliance in Singapore between Clifford Chance Pte Ltd and Cavenagh Law LLP.

"However, the uncovering in August 2023 of the biggest money laundering case in Singapore sent shockwaves through the financial world. The case involves the laundering of USD 2.2 billion in criminal proceeds through Singapore's financial system by a group of ten Chinese nationals and has embroiled multiple banks. The media has reported that various banks are the subject of ongoing regulatory investigations in relation to the matter," she says.

In response to the case, the central bank regulator, the Monetary Authority of Singapore (MAS), reaffirmed its commitment to combating the misuse of its financial systems for illicit activities. The MAS also emphasised the

importance of maintaining stringent AML measures among financial institutions and said it was in contact with the financial institutions where potentially tainted funds were found and is conducting ongoing supervisory engagements to ensure compliance with its regulatory requirements. It added that strong actions would be taken against any financial institution found breaching these regulations.

"Clearly, this high-profile case sends a signal to financial institutions to be vigilant in detecting suspicious activities. There are media reports stating that the MAS has completed onsite inspections of some banks involved in the scandal, and it has also been reported that banks with dealings with the offenders are expected to face penalties after the investigation concludes," she adds.

The case has also prompted new enhanced AML laws – an Anti-Money Laundering Bill was introduced in the Singapore Parliament in July 2024 and passed a month later. The Bill seeks to enhance AML laws in Singapore and increase prosecution power. It includes two key changes (amongst others) which impact financial institutions and corporations:

- Easing of the Burden of Proof for Prosecutors in Money Laundering Cases.
- Foreign Environmental Crimes are now designated as predicate Money Laundering Offences.

Easing of the burden of proof for prosecutors in money laundering cases

One of the most significant changes is the amendment to AML legislation (i.e., the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA)) to ease the burden of proof for prosecutors in money laundering cases. Under the new legislation, it will be sufficient to prove beyond reasonable doubt that the money launderer knew or had reasonable grounds to believe they were dealing with criminal proceeds. Previously, prosecutors had to establish a direct link between the criminal conduct and the monies allegedly laundered.

Under the new regime, it is no longer necessary for prosecutors to identify any specific or particular asset which represented the proceeds of crime. This change will facilitate the prosecution of money mules and intermediaries, including financial institutions receiving monies from their clients. To illustrate, if a bank suspects that its client is involved in AML activities, it is irrelevant whether the proceeds handled by the bank are proceeds of crime. In practice, the threshold for knowledge or suspicion is therefore lowered.

Foreign environmental crimes are now designated as predicate money laundering offences

Another crucial aspect of the bill is the designation of foreign environmental crimes as predicate offences for money laundering. The bill expands law enforcement agencies' powers to investigate money laundering offences when they suspect that funds are derived from serious environmental crimes committed overseas. This change addresses a significant gap in the existing legislation, which limited the ability to investigate money laundering associated with environmental crimes as many environmental offences do not apply domestically, resulting in the existing legislation limiting our ability to investigate money laundering associated with environmental crimes.[1]

What this means is that banks and financial institutions need to ensure that their due diligence in respect of their clients and transactions covers environmental due diligence adequately. This ties in with the increased focus on ESG. For example, investment banks sponsoring an IPO, or lenders to companies, need to ensure that they are not indirectly facilitating and funding environmental crimes of the company.

1. Ministry of Home Affairs, Anti-Money Laundering and Other Matters Bill. Published 2nd July 2024.

ESG and greenwashing claims have been on the rise in Asia Pacific and in particular Singapore. Last year, ESG activist Market Forces lodged a complaint on the Singapore Exchange's formal whistleblower portal, alleging that JERA (Japan's largest power generation company) had issued bonds to public investors without adequate disclosures in its prospectus on risks facing the LNG industry, including major geopolitical events and climate change. This was the first whistleblower complaint lodged with the Singapore Exchange which relates to ESG issues. Although the whistleblower complaint did not relate to environment crimes directly, it signifies the increasing risks of exposure to ESG-related and greenwashing claims. "Coupled with the new AML legislation on designating environmental crimes as a money laundering offence, financial institutions need to pay heightened attention to their environmental due diligence and ESG-related risks," Goh says.

CONTACTS

David DiBari
Partner
Washington DC
T: +1 202 912 5098
E: david.dibari@cliffordchance.com

Jamal El-Hindi
Counsel
Washington DC
T: +1 202 912 5167
E: jamal.elHindi@cliffordchance.com

Janice Goh
Partner,
Cavenagh Law
Singapore
T: +65 6661 2021
E: janice.goh@cliffordchance.com

Michael Lyons
Partner
London
T: +44 207006 4317
E: michael.lyons@cliffordchance.com

Gerson Raiser
Counsel
Frankfurt
T: +49 69 7199 1450
E: gerson.raiser@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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