Recent AML Enforcement Trends in the UK

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Introduction

The UK has stepped up its anti-money laundering (AML) enforcement approach in recent months, both issuing larger fines and looking to expand the scope of activities it regulates. Historically, the UK has consistently taken a robust approach to AML, and post-Brexit, we expect this trend to continue, as the government works with other regulators internationally in combating cross-border economic crime.

Brexit

Pre-Brexit, the UK adopted the European Union's extensive AML framework. However, as of 31 December 2020, the onus is now on the UK to ensure that it keeps up to date with the latest international AML regulations and developments. The UK remains a member of the Financial Action Task Force — an international organization dedicated to monitoring AML and counter-terrorism financing (CTF) regulations and global standards — and thus is likely to remain aligned with its allies on AML strategy.

In relation to its legislative powers, the UK has enacted the Sanctions and Anti-Money Laundering Act 2018, which gives the government the power to implement new AML legislation. This will allow it to stay current with any new developments.

Post-Brexit, the UK is no longer bound by the EU's Money Laundering Directives (MLDs), though to date there have been no proposals to overhaul the existing Fifth Money Laundering Directive (5MLD), which already has been implemented in UK law.

On the other hand, the UK has not opted into the EU's Sixth Money Laundering Directive (6MLD), as the government considers its existing AML framework to already cover most of the 6MLD's requirements. The 6MLD does, however, require EU member states to implement the offence of failure to prevent money laundering, such that entities may be held liable for money laundering where it has occurred for their benefit, by a person under their authority, due to lack of supervision or control. The UK has not enacted this corporate offence so far, although it has been the subject of much discussion. There have been proposals to amend the Financial Services Bill so that businesses or individuals regulated by the UK Financial Conduct Authority (FCA) would be held liable for failure to prevent economic crime, which would extend not just to money laundering, but also to fraud, false accounting, Proceeds of Crimes Act (POCA) offences, insider dealing, and providing false or misleading statements. In November 2020, the Law Commission was asked by the UK government to conduct research on the laws on corporate criminal liability and provide reform proposals. The Law Commission's findings are not due until later this year, and we are unlikely to see a new offence until this review is complete.

Regulatory Enforcement

In the regulatory sphere, there has been a marked increase in AML enforcement actions from a range of UK regulators, as well as an increase in the size of penalties.

Financial Conduct Authority

Of particular note is the FCA's announcement on 16 March 2021 relating to criminal proceedings against the majority government-owned bank, NatWest, for breaches of the Money Laundering Regulations 2007 during 2011-16. The FCA commenced its investigation into NatWest in 2017 and alleges that NatWest failed to conduct risk-sensitive due diligence and ongoing monitoring of its relationships with its customers for the purposes of preventing money laundering, allowing £264 million to be paid via cash into customer accounts. NatWest is due to appear in court on 14 April 2021.

This is the FCA's first use of criminal powers under the Money Laundering Regulations 2007, which allow it to issue unlimited fines, as well as revoke trading licences. So far, it has failed to bring any successful AML criminal prosecutions under this regime. In 2020, the FCA discontinued seven out of its 14 criminal investigations into violations of the money laundering regulations. It will therefore be interesting to see how far it goes in issuing any potential fine, as well as the subsequent comparison between the civil and criminal regime penalties.

Other recent AML enforcement actions the FCA has taken under the civil regime include a £163 million fine in 2017, a £102 million fine in 2019, and most recently, in June 2020, a £37.8 million fine — all issued to global banks. The FCA also confirmed at the end of 2020 that it was investigating 16 financial institutions in relation to AML controls, emphasising its current focus on the AML sector.

HM Revenue & Customs

HM Revenue & Customs (HMRC) is considered a supervisor for more than 30,000 businesses across the UK under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. In 2019 to 2020, HMRC recovered over £166 million from the proceeds of crime, of which more than £22 million was linked to money laundering offences.

Additionally, in January 2021, HMRC announced a record-breaking £23.8 million fine on MT Global Ltd., a money service business, for significant breaches of the Money Laundering Regulations 2017. Prior to this, the largest AML fine it had issued was in September 2019, of £7.8 million, to Touma Foreign Exchange.

National Crime Agency

The National Crime Agency continues to utilise its controversial Unexplained Wealth Orders (UWOs) tool with mixed success. The most recent UWO was successfully secured by the NCA on assets of almost £10 million in October 2020.

Office of Financial Sanctions Implementation

The Office of Financial Sanctions Implementation (OFSI), the UK's sanctions regulator, appointed a new director, Giles Thomson, in February 2021, who has noted that the scope of OFSI will be widened to cover economic crime policy as well as sanctions.

Looking to the Future

AML appears to be at the forefront of the UK's agenda, with regulatory action showing no signs of slowing post-Brexit. The FCA decision against NatWest will be of particular interest in the coming months and provide a greater insight into the FCA's future approach to AML. The UK's decision on implementation of a failure to prevent economic crime offence, and how wide it extends this scope, also will be a key development to watch this year.