

New UK Offense Will Help Law Firms Tighten AML Compliance

By **Richard Simms** (August 2, 2023, 5:56 PM BST)

The U.K. Economic Crime and Corporate Transparency Bill, now undergoing its final Parliamentary stages, is needed because the U.K. has fundamental problems with its handling of money laundering and corruption.

The U.K. is second only to the U.S. in the amount of money laundered through its economy — £87.9 billion (\$112.4 billion) — 4.3% of our GDP.[1]

We have dropped to 18th place in the Transparency International Corruption Perceptions Index.[2]

This is four places below Uruguay, a country that sits in just 44th place for freedom of expression in the Reporters Without Borders ranking.[3] Does this really sit comfortably with the U.K. legal sector when it could, and should, be doing more to help?

Compliance with anti-money laundering regulation is not always easy. It can be time-consuming and, if not done properly, fraught with risk.

Governments around the world, including in the U.K., are increasingly seeing the most effective ways to tackle organized crime as tightening AML regulations, conducting more frequent AML inspections on regulated firms and levying high profile, highly dissuasive penalties for breaches.

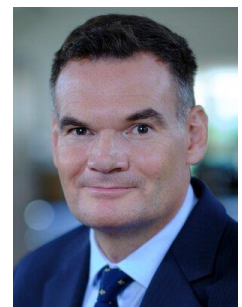
Many commentators have accused the Economic Crime (Transparency and Enforcement) Act 2022 of not going far enough in addressing the broader issues of economic crime. The Royal United Services Institute noted that it should be seen as a starting point, not an end.[4] If it was intended as this, the Economic Crime and Corporate Transparency Bill is the next step.

So, what should be done?

Although money laundering and related activities themselves can become complex, the process that professionals must follow to comply with their legal AML obligations is clear and straightforward. The steps are clearly defined.

Simply put, one must:

- Appoint the appropriate AML roles in a firm;



Richard Simms

- Train all employees, agents and senior management so they fully understand how to recognize money laundering, terrorist financing and proliferation financing, and are in no doubt as to their legal AML obligations and how to complete them;
- Carry out a firmwide risk assessment and assess the risks faced by specific department and service lines;
- Use any risks, or potential risks, identified in a firmwide risk assessment to shape policies, controls and procedures — the risk-based approach;
- Complete a client due diligence process for all clients — identify, risk assess, verify. Remember a detailed client risk assessment on every client is a fundamental part of the client due diligence process; and
- Ensure a full audit trail is in place to prove on demand that legal AML obligations have been complied with and relevant risks have been managed. It might not only be a supervisor that needs this proof, but law enforcement carrying out potential criminal investigations could also knock on the door at any time.

At a basic level, when a professional is undertaking a service that is regulated for AML then they must be in a position to identify whether a suspicious activity report is required and to know that the identity information on the report is 100% correct.

Incorrect information is of no value to law enforcement whatsoever, which is why identifying and verifying a client's identity as part of a client due diligence process is crucial.

This obligation on U.K. professionals has been in place since 2007. Since then, the law and guidance has enhanced the requirements falling on professionals, along with the government and U.K. AML regulators gaining a greater understanding of the risks faced. From 2017 requirements have remained largely the same.

This new bill is not fundamentally changing anything; it is merely further tightening up the process and introducing the possibility of much larger fines and potentially increased criminal charges with the failure to prevent offense.

Proposed amendments to the bill from the U.K. House of Lords would mean that this new offense will apply to firms regardless of size or sector.

U.K. professionals must stop seeing AML risk management and compliance as a nuisance and a waste of their time — there is a much bigger picture.

Despite changes to the regulations the simplicity of AML remains. A structure to identify risks within a firm should be established, real life workable policies should be assembled, with controls and procedures to manage those risks.

The risk analysis and identity verification of clients needs to be extended, and then the AML environment should be kept alive and flexible with live feedback from day-to-day operations and structured reviews. Underlying this must be a strong ongoing training approach for all staff.

The logic of AML must win in the end. Not taking an active part in undertaking criminal activity is surely the goal of all professional firms.

Any legal firm would be horrified if they were accused of assisting with child sex trafficking or introducing illegal drugs onto U.K. soil. However, not taking AML obligations seriously is allowing these criminal gangs to get a foothold and allowing them to appear as legitimate businesses.

The legal sector is a gatekeeper into the U.K. professional system. It brings legitimacy.

Who pays for this? It cannot be denied that there is a set-up cost, but this must be seen as part of the defensive steps to protect the firm. AML exists to protect individuals, businesses and employees.

In reality, the requirement to understand a client is what creates a risk assessment but is it not a basic requirement to understand a client to be able to offer advice?

Documenting a client risk assessment is about taking a few moments extra to prove an understanding of that client, not simply to say one does.

The U.K. government and governments internationally are trying to make it difficult for criminals to benefit from the proceeds of crime. Slowly shedding light on who owns what and how such assets were funded is the goal at its simplest level.

Whether through a register of overseas property, a register of trust ownership or greater disclosure and identity verification at U.K. Companies House, the goals are still the same.

However, all of those U.K. and international efforts are wasted if professionals enable criminals to step around the requirements. Those doing it intentionally we hope will get caught.

However, those doing it without realizing will walk themselves into all sort of trouble. They are making themselves a target for criminals who can be confident they will get away with it simply because the appropriate questions are not asked, and the necessary information is not collected and verified.

The more firms that wander along oblivious to AML requirements, the harder the pressure on the professionals will become to achieve the statutory level of requirements. The fines and punishments will only grow.

One aspect of the bill set to affect the legal sector is the provision for the U.K. Solicitors Regulation Authority to impose an unlimited fine on firms found not to have complied with an imposed requirement. There are precedents in other nonfinancial regulated sectors to show that with no cap on penalties, supervisors are very willing to make examples.

The government has already set up a professional body to oversee supervisors — the Office for Professional Body Anti-Money Laundering Supervision. If that does not prove sufficient to force the professionals to take this process seriously, the professional body supervisors could be replaced by some form of AML government body.

Any person overseeing a supervisor will not have any leaning toward helping supervised firms — a key goal is likely to be fining and punishing noncompliant firms.

One thing that the Economic Crime and Corporate Transparency Bill proves is that AML law within the U.K. and internationally will continue to evolve as governments attempt to counter new and insightful methods of money laundering.

The smoothest way to manage that pace of change is to have a firm's AML environment set up and running, so that changes are simply an adjustment of policies, controls and procedures to stay on top of things.

Having carried out all the necessary steps, and being able to prove it, will minimize the risk to the individual, the firm and the employees.

Avoiding the new failure to prevent offense means having reasonable procedures in place. They have yet to be defined, but following all the defined steps in the AML regulations is the right thing to do.

As U.S. businessperson and investor Warren Buffett quite rightly said, "Someone is sitting in the shade today because someone else planted a tree a long time ago." [5]

If all regulated professionals pull together to fight worldwide money laundering it will start to work.

Richard Simms is managing director at Anti-Money Laundering Compliance Company Ltd.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] 'OECD Money Laundering Leader Board', Credas, <https://credas.com/news/oecd-money-laundering-leader-board/> (accessed on 23 July 2023).

[2] 'Corruption Perceptions Index', Transparency International, <https://www.transparency.org/en/cpi/2022> (accessed on 23 July 2023).

[3] 'Uruguay', Reporters without Borders, <https://rsf.org/en/index> (accessed 23 July 2023).

[4] 'The Economic Crime Act 2022: A Starting Point, Not an End', RUSI, <https://www.rusi.org/explore-our-research/publications/commentary/economic-crime-act-2022-starting-point-not-end> (accessed on 24th July 2023).

[5] <https://www.uschamber.com/co/start/strategy/warren-buffett-quotes-for-businesses>.