



PROVISIONS OF ANTI-MONEY LAUNDERING

Table of contents

INTRODUCTION 02.

ANTI-MONEY LAUNDERING 03.

CONSEQUENCES OF NON-COMPLIANCE 04.

**ROLE OF ANTI-MONEY LAUNDERING
OFFICER** 05.

RESPONSIBILITES OF OFFICER 06.

CONCLUSION 07.

HOW WE CAN HELP 08.

Introduction

Nowadays, the significance of adhering to anti-money laundering (“AML”) regulations extends beyond safeguarding the financial system against money laundering and financing of terrorism. It is now closely intertwined with combating fraud as well. Dishonest individuals often employ money laundering methods to obscure the origins of their illicit gains, rendering fraud detection and prevention more challenging. Therefore, AML compliance programs that include customer due diligence, transaction monitoring and reporting of suspicious activities can also play a key role in detecting and preventing fraud.

The connection between fraud and AML compliance highlights the significance of having robust anti-money laundering programs in place. These programs not only help prevent money laundering and terrorist financing but also play a crucial role in detecting and preventing fraud.



Significance of robust AML compliances

Financial institutions and businesses must comply with strict anti-money laundering regulations, including customer due diligence, transaction monitoring and reporting of suspicious activities, to avoid hefty fines and penalties imposed by regulatory authorities. Failure to comply can result in severe legal consequences, including criminal liability for individuals within the organization. Complying with AML provisions helps to mitigate these risks and maintain the integrity of the financial system.



Anti-money laundering

Failing to comply with anti-money or AML and counter terrorist financing or CTF laws and regulations can have serious consequences. Such consequences include punitive fines, criminal proceedings, damaged reputations and sanctioning. These consequences can have severe repercussions on an organization's reputation and overall performance.

Violations of AML and Counter-Terrorist Financing (“CTF”) laws and regulations can be particularly detrimental, as they may result in the organization being sanctioned by international bodies. Such sanctions significantly restrict or even completely impede the organization's capability to fulfill the global transaction requirements of its international customers.



Following the economic crisis, there has been a shift towards a more cautious and protective approach by regulatory authorities, aimed at safeguarding the interests of the financial market and consumers. As a result, compliance has become an ongoing and perpetual process, causing ongoing efforts to meet regulatory requirements.

Major consequences of non-compliance

Regulatory fines

The primary and most significant category of damage pertains to regulatory penalties. As regulatory frameworks continuously evolve, the expectations surrounding an effective risk-based AML/CTF compliance program also progress. US regulators have imposed 25 AML-related penalties adding up to 2.3 billion US dollars. British regulators took second place globally, issuing 12 penalties totaling almost 400 million US dollars.



Reputational risk

Organizations with strong positive reputations have the ability to attract top talent and are perceived as delivering greater value, enabling them to command premium prices. Their customers tend to show higher loyalty and purchase a wider range of products and services. As the market believes that these companies will consistently generate earnings and future growth, they often enjoy higher price-earnings and market values along with lower capital costs.

Legal liability risk

The third damage category involves legal liability risks. It includes both civil and criminal liabilities. The possibility of legal damages being incurred increases with more frequent civil class action lawsuits. While it was once very exceptional, the prospect of criminal liability risks for money laundering activities cannot be discounted.

Role of Anti-money laundering officer

The employee who works to combat financial crime for their companies is called Money Laundering Reporting Officer (“MLRO”). They play a crucial role in providing anti-money laundering and counter-terrorist financing regulations. MLRO is responsible for informing the relevant authorities about financial crimes or any suspicious actions. The MRLO is the individual responsible for making decisions regarding anti money laundering (“AML”) reporting, which can impact the company's relationship with its customers and its exposure to criminal, legal, regulatory, and disciplinary actions. The MRLO oversees all activities conducted within the AML framework. In order to effectively carry out these responsibilities, the MRLO should possess the necessary authority and access to all client files and business information. This enables them to trace processes and make informed decisions based on the available information.



Role of MLRO

As a best practice, MLRO of a larger organization or corporation should maintain independence from business operations, including activities related to the receipt, transfer or payment of funds. The MLRO should focus on independent monitoring and oversight of AML processes. Furthermore, the MLRO should have direct access to individuals who make business decisions within the organization, such as senior management or the board of directors. This ensures effective communication and facilitates the MLRO's ability to address AML concerns and report findings directly to key decision-makers.

Responsibilities of MLRO



Risk assessment, one of the most sublime duties, is to assume and manage various levels of risk. At this stage, the management needs to guide and give the necessary permissions.



An MLRO also plays a role in fostering the appropriate compliance culture, which can include the development and delivery of AML as well as counter-terrorism financing (“CTF”) training to employees and executives. This includes describing the significance of a risk-based approach to compliance.



The MLRO must have the authority to make reports to law enforcement without seeking permission from another person. Their employer must also provide the means for them to review and communicate Suspicious Activity Reports (“SARs”) to law enforcement in a timely.

Conclusion

AML compliance continues to hold significant importance for companies, and it is evident that we are currently in a challenging era of change that places a heavier burden on compliance professionals. The COVID-19 pandemic has introduced various risks for businesses, accentuating the need for enhanced regulation in markets and an increased demand for security. Risks associated with non-compliance with anti-money laundering laws and regulations, as well as how to deal with financial sanctions imposed by global bodies and the risks associated with ensuring compliance with them, should be high on the agendas of financial institutions' boards of directors, executive management and risk committees.

The MLRO, also referred to as a "nominated officer," assumes the responsibility of supervising the AML systems within their company and acts as a central point of contact for inquiries related to AML. This role carries substantial obligations, as the MLRO requires access to the company's financial records to ensure effective oversight. Additionally, they are responsible for making strategic decisions concerning money laundering and financial crime activities.

The responsibilities of the MLRO can lead to substantial legal repercussions, including civil and criminal actions. MLRO bears considerable personal liability within their organizations. In cases where AML safeguards are deemed insufficient, the MLRO may face substantial fines and, in severe instances, even imprisonment. Given the critical nature of the MLRO position within a company, it is crucial for senior executives to fully comprehend and carefully consider the role and its implications.



How we can help?

Chandrawat & Partners can play a crucial role in providing Anti money laundering services by offering legal expertise and guidance throughout the process. Here are some ways the firm can assist in this capacity:

Our team can assist in designing and implementing AML compliance programs tailored to the specific needs of the client's business. This includes conducting risk assessments, developing internal controls, and establishing ongoing monitoring and reporting mechanisms.

Anti-money laundering arrangements may involve compliance with specific industry regulations or legal requirements. The firm can assist in navigating these complexities and ensuring that all relevant regulations are met.

A crucial component of AML efforts is conducting due diligence on clients, business partners, and transactions. We can assist in conducting thorough background checks, verifying the identities of customers and beneficial owners, and assessing the potential risks associated with specific transactions or business relationships.

Our professionals can conduct independent audits of a client's AML compliance program to assess its effectiveness and identify any gaps or areas of improvement. Regular audits can help clients stay updated with regulatory changes and ensure ongoing compliance.



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Key Contact



Surendra Singh Chandrawat

Managing Partner

✉ surendra@chandrawatpartners.com

Connect Surendra on



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