SRA Unlimited Fines For Economic Crimes & AML Data Collection Exercise

The SRA was granted the power on 4 March 2024 to impose unlimited fines for economic crimes as a result of the Economic Crime and Corporate Transparency Act 2023. It has not yet exercised this power but has begun a consultation which began on 28 June and lasts until 20 September, read here, writes Jayne Willetts Solicitor Advocate of Jayne Willetts & Co Solicitors & Rebecca Atkinson Solicitor of McArthur Atkinson.

Against this backdrop the SRA emailed all firms on 2 July giving advance notice that at the start of August it will send to firms a digital questionnaire regarding AML and financial sanctions activity which will need to be completed by mid-September.

This AML Data Collection Exercise 2024 is covered more fully in the SRA announcement here

In this article, we explore these two developments and provide brief practical guidance on how to make sure you are meeting the legislative requirements.

UNLIMITED FINES

As outlined above, under the Economic Crime and Corporate Transparency Act 2023 the SRA now has the power to issue unlimited fines for economic crimes but has not yet begun to use its powers and is consulting on the same.

This ability to fine law firms and individuals unlimited sums will remove the statutory cap of £25,000 (a relatively recent increase in itself). The new power enables the SRA to impose an unlimited fine where it finds a failure on the part of an individual or firm in the following:

a) the prevention or detection of economic crime; or if

b) the failure consisted of an act or omission which had the effect of inhibiting the prevention or detection of economic crime.

The definition of economic crime under the Act is an act which:

a) constitutes an offence listed in Schedule 11 ('a listed offence')

b) constitutes an attempt, conspiracy or incitement to commit a listed offence, or

c) would constitute a listed offence or an offence specified in paragraph (b) if done in the United Kingdom.

A Schedule 11 offence includes cheating the public revenue (i.e. tax evasion) and fraudulent evasion of VAT, untrue tax declarations, theft, false accounting, dishonestly retaining wrongful credit, forgery, offences under POCA or the Terrorism Act 2000, an offence under the money laundering regulations of contravening a relevant requirement (regulation 86), fraud, bribery and more.

It is open to the SRA therefore to issue a much larger fine than it ordinarily would where it finds that the money laundering regulations have not been adhered to.

AML DATA COLLECTION EXERCISE

The AML Data Collection Exercise 2024 will enable the SRA to accumulate data on the distribution of risk throughout the profession and then decide what needs to be done by way of inspections and guidance. The SRA is required to do this by its own regulator, the Office for Professional Body Anti-Money Laundering Supervision. The SRA has been helpful in providing a copy of the AML questionnaire that needs to be completed so firms can see what needs to be done before the formal start date in early August. Failure to complete the form may result in enforcement action being taken.

The form is divided according to the activities of the firms. There are four sections 1. AML questions for firms within scope of the Money Laundering Regulations 2. Trust or Company Service provider questions 3. Suspicious Activity Report questions and finally 4. Sanctions questions. All firms are subject to the financial sanctions regime so all firms will need to complete this 4th section.

Completing the questionnaire requires firms to collate a significant amount of data. There are also questions that will lead firms straight to a disciplinary investigation and a large fine if the wrong answer is given. For example, does your firm have a firm wide risk assessment, when was it last updated, do you have AML policies, controls and procedures and when were they last updated.

Some of the other questions will require firms to trawl through their own data to provide the answers. For example, question 12 asks *"What percentage of your firm's new AML matters in the last 12 months had Enhanced Due Diligence applied to them?"* You are invited to reply by way of pre-set percentages and asked to use your best estimate if you do not have exact figures. Some firms will have this information at their fingertips but for others it will take a long time to accumulate the information. What we can predict is that this year the SRA is likely to be content with firms providing *"best estimates"* but as it is likely that this data collection will be an annual event then firms will need to have systems in place from which they can provide the information. In order to do this, the SRA will need to be persuaded to ask the same questions each year so that firms can introduce the necessary procedures in-house to make the exercise as painless as possible. Changing the questions each year will impose yet another heavy regulatory burden on the profession.

Whilst all firms should be keeping a good record of internal suspicious activity reports (SARs) and external ones to the NCA and be able to produce that with ease, some firms will not easily be able to provide the data asked for about matters or how many times the firm has returned more than £5,000 to their client (a question that is asked in the questionnaire). Firms should consider the data that is being asked therefore and consider how going forward they will be able to capture this data for future production. This data could be captured at file opening stage, at any ongoing monitoring check point and/or with the accounts team.

MAKING SURE YOU ARE UP TO DATE

Although at this stage the questionnaire does not ask you to produce any documentation, your firm may be selected later on for a visit by the SRA AML team whereby you will most certainly need to provide copies of your policies, controls and procedures. It is important also that you do not falsely answer the questionnaire and confirm that you have something when you do not.

At a high level, all firms should at all times have the following in place:

- a compliant practice wide risk assessment
- an AML policy that documents all required policies, controls and procedures
- adequate processes for collecting and checking due diligence on clients, sanctions checking, PEP checking and adverse media screening (the latter is not technically a part of the regulatory requirements but can unearth money laundering concerns)
- a process for enhanced due diligence and simplified due diligence
- a process for checking source of funds and wealth and for this to be appropriately applied
- a process for ongoing monitoring
- a process for client and matter risk assessments and for this to be followed
- appropriate screening of people who work for the firm
- a training programme which is fit for purpose
- keep good records and consider maintaining a high risk register to record PEPs, sanction issues, SARs made to the NCA and any other high-risk factors
- have a policy on reliance under the regulations
- have an independent AML audit undertaken

In addition, firms need to ensure they have adequately assessed the sanctions risks encountered by their firm and put in to place appropriate policies, controls and procedures. The SRA issued guidance in January 2024 on how firms should conduct a sanctions risk assessment and this should be reviewed. SRA Sanctions regime - firm-wide risk assessments Solicitors Regulation Authority

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