

CHAPTER 1**SENIOR MANAGEMENT RESPONSIBILITY AND GOVERNANCE**

<p>➤ International recommendations and authorities</p> <ul style="list-style-type: none"> • FATF Recommendations (February 2012) • UN Security Council Resolutions 1267 (1999), 1373 (2001) and 1390 (2002)
<p>➤ International regulatory pronouncements</p> <ul style="list-style-type: none"> • Basel paper – <i>Sound management of risks related to money laundering and financing of terrorism</i> (updated February 2016) • IAIS Guidance Paper 5 • IOSCO Principles paper
<p>➤ EU Directives</p> <ul style="list-style-type: none"> • First Money Laundering Directive 91/308/EEC • Second Money Laundering Directive 2001/97/EC • Third Money Laundering Directive 2005/60/EC • Implementing Measures Directive 2006/70/EC Fourth Money Laundering Directive 2015/849
<p>➤ EU Regulations</p> <ul style="list-style-type: none"> • EC Regulation 2580/2001 • EC Regulation 1781/2006 (the Wire Transfer Regulation) EC Regulation 847/2015 (the Wire Transfer Regulation)
<p>➤ UK framework</p> <ul style="list-style-type: none"> • Legislation <ul style="list-style-type: none"> • FSMA 2000 (as amended) • Proceeds of Crime Act 2002 (as amended) • Terrorism Act 2000 (as amended by the Anti-terrorism, Crime and Security Act 2001) • Money Laundering Regulations 20072017 • Counter-terrorism Act 2008, Schedule 7 • Financial Sanctions <ul style="list-style-type: none"> ○ HM Treasury Sanctions Notices and News Releases • Regulatory regime <ul style="list-style-type: none"> ○ FCA Handbook –APER, COND, DEPP, PRIN, and SYSC ○ FCA Financial Crime Guide • Industry guidance
<p>➤ Other matters</p> <ul style="list-style-type: none"> • Extra-territoriality of some overseas jurisdictions' regimes
<p>➤ Core obligations</p> <ul style="list-style-type: none"> • Senior management in all firms must: <ul style="list-style-type: none"> ○ identify, assess, and manage effectively, the risks in their businesses ○ if in the regulated sector, appoint a nominated officer to process disclosures • Senior management in FCA-regulated firms must appoint individual(s) (including an MLRO) with certain responsibilities • Adequate resources must be devoted to AML/CFT • Potential personal liability if legal obligations not met
<p>➤ Actions required, to be kept under regular review</p> <ul style="list-style-type: none"> • Prepare a formal policy statement in relation to the prevention, and risk assessment of, money laundering/terrorist financing prevention • Ensure adequate resources devoted to AML/CFT

- Commission annual report from the MLRO and take any necessary action to remedy deficiencies identified by the report in a timely manner

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Introduction

SYSC 3.1.1 R, 3.2.6 R, 6.1.1 R 6.3.1 R	1.1	Being used for money laundering or terrorist financing involves firms in reputational, legal and regulatory risks. Senior management has a responsibility to ensure that the firm's <u>policies, controls processes</u> and procedures are appropriately designed and implemented, and are effectively operated to reduce the risk of the firm being used in connection with money laundering or terrorist financing.
<u>Regulation 18</u>	<u>1.1A</u>	<p><u>The ML Regulations require firms to take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which their business is subject, taking into account:</u></p> <ul style="list-style-type: none"> ➤ <u>information on money laundering and terrorist financing made available to them by the FCA;</u> ➤ <u>risk factors, including factors relating to their customers, countries or geographic areas in which they operate, products, services, transactions and delivery channels.</u> <p><u>In considering what steps are appropriate, firms must take into account the size and nature of its business.</u></p>
<u>Regulation 16(2)</u>	<u>1.1B</u>	<u>The assessment should be informed by relevant findings in the National Risk Assessment.</u>
	1.2	Senior management in financial firms is accustomed to applying proportionate, risk-based policies across different aspects of its business. A firm should therefore be able to take such an approach to the risk of being used for the purposes of money laundering or terrorist financing. Such an approach would change the emphasis and mindset towards money laundering and terrorist financing without reducing the effectiveness with which the risks are managed.
	1.3	Under a risk-based approach, firms start from the premise that most customers are not money launderers or terrorist financiers. However, firms should have systems in place to highlight those customers who, on criteria established by the firm, may indicate that they present a higher risk of this. The systems and procedures should be proportionate to the risks involved, and should be cost effective.
<u>Regulation 19(2)(b), 19(7)</u>	1.4	Senior management must be fully engaged in the decision-making processes, and must take ownership of the risk-based approach, since they will be held accountable if the approach is inadequate. <u>Senior management approval is specifically required for the firm's policies, controls and procedures for mitigating and managing effectively the risks of money laundering and terrorist financing identified in the firm's risk assessment.</u>
<u>Regulation 21(1)(a)</u>	<u>1.4A</u>	<u>Where appropriate with regard to the size and nature of its business, a firm must appoint a member of its board of directors (or equivalent management body) as the officer responsible for the firm's compliance with the ML Regulations.</u>

1.4B Senior management must be aware of the level of money laundering risk the firm is exposed to and take a view whether the firm is equipped to mitigate that risk effectively; this implies that decisions on entering or maintaining high-risk business relationships must be escalated to senior management. That said, provided the assessment of the risks has been approached in a considered way, the selection of risk mitigation procedures is appropriate, all the relevant decisions are properly recorded, and the firm's policies, controls and procedures are followed and applied effectively, the risk of censure by the regulator should be minimised.

International AML/CTF standards and legislation

1.5 Governments ~~in many countries~~ across the world are increasingly enacting legislation to make money laundering and terrorist financing criminal offences, and ~~have putting~~ legal and regulatory processes in place to enable those engaged in these activities to be identified and prosecuted.

1.6 FATF issue International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (the FATF Recommendations), aimed at setting minimum standards for action in different countries, to ensure that AML/CTF efforts are consistent internationally. The text of the FATF Recommendations is available at www.fatf-gafi.org. FATF also maintains an International Cooperation Review Group (ICRG) and publishes a regularly updated list of those countries and jurisdictions that have strategic deficiencies and works with them to address those deficiencies that pose a risk to the international financial system.

1.7 European legislation provides a common legal basis for the implementation of the FATF Recommendations, including supporting guidance, by Member States. An EU Directive is targeted at money laundering prevention, and has been implemented in the UK mainly through the Money Laundering Regulations ~~2007~~[2017]. ~~A proposed revision to the EU directive was published in February 2013, to implement the revised FATF Standards which were published in February 2012.~~

1.7A Under the Fourth Money Laundering directive, the European Commission is empowered to identify high-risk third countries with strategic deficiencies in the area of anti-money laundering or countering terrorist financing. The Commission adopted Delegated Regulation 2016/1675 in July 2016. See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L.2016.254.01.0001.01.ENG>.

1.7B Countries may also be assessed using publicly available indices from, for example, HM Treasury Sanctions¹, FATF high-risk and non-cooperative jurisdictions², MoneyVal evaluations³, Transparency

¹ <http://hmt-sanctions.s3.amazonaws.com/sanctionsconlist.pdf>

² <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/>

[International Corruption Perception Index⁴](#), [FCO Human Rights Report⁵](#), [UK Trade and Investment overseas country risk pages⁶](#) and [quality of regulation⁷](#).

- 1.8 Internationally, the FATF Recommendations, the Basel paper *Sound management of risks related to money laundering and financing of terrorism* (www.bis.org), IAIS Guidance Paper 5 (www.iais.org) and the IOSCO Principles paper (www.iosco.org) encourage national supervisors of financial firms to require firms in their jurisdictions to follow specific due diligence procedures in relation to customers. These organisations explicitly envisage a risk-based approach to AML/CTF being followed by firms.
- 1.9 The United Nations and the EU have sanctions in place to deny a range of named individuals and organisations, as well as nationals from certain countries, access to the financial services sector. In the UK, HM Treasury ([through the Office for Financial Sanctions Implementation](#)) issues sanctions notices whenever a new name is added to the list, or when any details are amended.
- 1.10 Some international groupings, official or informal, publish material that may be useful as context and background in informing firms' approaches to AML/TF. These groupings include Transparency International (www.transparency.org.uk) and the Wolfsberg Group (www.wolfsberg-principles.com).

The UK legal and regulatory framework

- 1.11 The UK approach to fighting financial crime is based on a partnership between the public and private sectors. Objectives are specified in legislation and in the FCA Rules, but there is usually no prescription about how these objectives must be met. Often, the objective itself will be a requirement of an EU Directive, incorporated into UK law without any further elaboration, leaving UK financial businesses discretion in interpreting how it should be met.
- 1.12 Key elements of the UK AML/CTF framework are:
- Proceeds of Crime Act 2002 (as amended);
 - Terrorism Act 2000 (as amended by the Anti-terrorism, Crime and Security Act 2001);
 - Money Laundering Regulations ~~2007~~[2017];
 - Counter-terrorism Act 2008, Schedule 7
 - HM Treasury Sanctions Notices and News Releases; and
 - FCA Handbook.
- 1.13 Implementation guidance for the financial services industry is

³ <http://www.coe.int/t/dghl/monitoring/moneyval/>

⁴ <http://cpi.transparency.org/cpi2013/results/>

⁵ <http://www.hrdreport.fco.gov.uk/>

⁶ <http://www.ukti.gov.uk/export/howwehelp/overseasbusinessrisk/countries.html>

⁷ <http://www.state.gov/eb/rls/othr/ics/2013/index.htm>

provided by the JMLSG.

1.14 No single UK body has overall responsibility for combating financial crime. Responsibilities are set out in Appendix I.

Regulation 3
(+)(8(1),(2))

1.15 The ML Regulations apply to a range of specified firms undertaking business in the UK. POCA and the Terrorism Act consolidated, updated and reformed the scope of UK AML/CTF legislation to apply it to any dealings in criminal or terrorist property. The UK financial sanctions regime imposes additional obligations on firms. Thus, in considering their statutory obligations, firms need to think in terms of involvement with any crime or terrorist activity.

UK Anti-money
laundering and
terrorist finance
strategy,
28 February 2007

1.16 ~~Firms should be aware of the UK's strategy document *The financial challenge to crime and terrorism*, issued in 2007 jointly by HM Treasury, Home Office, SOCA (now the NCA) and the Foreign Office, which sets out why it is important to combat money laundering and terrorist financing. The strategy document notes that the Government's objectives are to use financial measures to:~~

- ~~deter~~ crime and terrorism in the first place by increasing the risk and lowering the reward faced by perpetrators;
- ~~detect~~ the criminal or terrorist abuse of the financial system; and
- ~~disrupt~~ criminal and terrorist activity to save lives and hold the guilty to account.

Serious and
Organised Crime
Strategy, October
2013

1.18 ~~Firms should also be aware of the Home Office's *Serious and Organised Crime Strategy*, issued in October 2013⁸.~~

~~The strategy uses the framework developed for counter-terrorist work and has four components:~~

- ~~prosecuting and disrupting people engaged in serious and organised crime (PURSUE);~~
- ~~preventing people from engaging in this activity (PREVENT);~~
- ~~increasing protection against serious and organised crime (PROTECT); and~~
- ~~reducing the impact of this criminality where it takes place (PREPARE).~~

Action Plan for anti-
money laundering and
counter-terrorist
finance, April 2016

1.17 In order to deliver these objectives successfully, the government believes action in this area must be underpinned by four priority areas, set out in the Action Plan for anti-money laundering and counter-terrorist finance, published in April 2016⁹:

- A stronger partnership with the private sector
 - Law enforcement agencies, supervisors and the private sector working in partnership to target resources at the highest money laundering and

⁸https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/248645/Serious_and_Organised_Crime_Strategy.pdf

⁹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundrying_web_.pdf

terrorist financing risks.

- New means of information sharing to strengthen the application of the risk-based approach and mitigate vulnerabilities.
- A collaborative approach to preventing individuals becoming involved in money laundering.

• **Enhancing the law enforcement response**

- New capabilities and new legal powers to build the intelligence picture, disrupt money launderers and terrorists, recover criminal proceeds, and protect the integrity of the UK's financial system.

• **Improving the effectiveness of the supervisory regime**

- Investigate the effectiveness of the current supervisory regime, and consider radical options for improvement to ensure that a risk-based approach is fully embedded, beginning with the understanding of specific risks, and the spotting of criminal activity, rather than a focus on tick-box compliance.

• **Increasing our international reach**

Increase the international reach of law enforcement agencies and international information sharing to tackle money laundering and terrorist financing threats.

—the three key organising principles that were first set out in the 2004 AML Strategy:

➤ **effectiveness** — making maximum impact on the criminal and terrorist threat:

- build knowledge of criminal and terrorist threats to drive continuous improvement
- make the best use of the financial tools we have, by making sure that all stakeholders make the maximum use of the opportunities provided by financial tools, including those to recover criminal assets

➤ **proportionality** — so that the benefits of intervention are justified and that they outweigh the costs:

- entrench the risk based approach
- reduce the burdens on citizens and business created by crime and security measures to the minimum required to protect their security

➤ **engagement** — so that all stakeholders in government and the private sector, at home and abroad, work collaboratively in partnership:

- work collaboratively across the AML/CTF community, including to share data to reduce harm

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~~engage international partners to deliver a global solution to a global problem~~

~~1.18 Firms should also be aware of the Home Office's *Serious and Organised Crime Strategy*, issued in October 2013¹⁰;~~

~~The strategy uses the framework developed for counter-terrorist work and has four components:~~

- ~~• prosecuting and disrupting people engaged in serious and organised crime (PURSUE);~~
- ~~• preventing people from engaging in this activity (PREVENT);~~
- ~~• increasing protection against serious and organised crime (PROTECT); and~~
- ~~• reducing the impact of this criminality where it takes place (PREPARE).~~

1.18A [HM Treasury and the Home Office jointly published the first UK national risk assessment of money laundering and terrorist financing in October 2015.](#)¹¹

General legal and regulatory obligations and expectations

Regulation 19 20 POCA ss327-330 Terrorism Act ss18, 21A	1.19	Senior management of any enterprise is responsible for managing its business effectively. Certain obligations are placed on all firms subject to the ML Regulations, POCA and the Terrorism Act and under the UK financial sanctions regime - fulfilling these responsibilities falls to senior management as a whole. These obligations are summarised in Appendix II .
SYSC	1.20	For FCA-regulated firms the specific responsibilities, and the FCA's obligations and expectations, of senior management are set out in FSMA and the FCA Handbook. These responsibilities and obligations are outlined in Appendix II.
	<u>1.20+ A</u>	Following the completion of thematic and other reviews, the FCA may clarify their expectations of firms in the relevant areas; firms should be aware of these expectations. The FCA has also issued a publication " <i>Financial Crime: A Guide for Firms</i> ", which provides practical assistance and information for firms on FCA's expectations of actions they can take to counter the risk that they might be used to further financial crime. This guide includes consolidated examples of the good and poor practice published with FCA thematic reviews.

Relationship between money laundering, terrorist financing and other financial crime

¹⁰https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/248645/Serious_and_Organised_Crime_Strategy.pdf

¹¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf

- 1.21 From a practical perspective, firms should consider how best they should assess and manage their overall exposure to financial crime. This does not mean that fraud, market abuse, money laundering and terrorism financing prevention, and financial sanctions obligations, must be addressed by a single function within a firm; there will, however, need to be close liaison between those responsible for each activity. This guidance ~~only~~ relates only to the prevention of money laundering and terrorism financing.

Obligations on all firms

- Regulations ~~20 19~~ and ~~45(183)~~ 1.22 The ML Regulations place a general obligation on firms within its scope to establish adequate and appropriate policies, controls and procedures to prevent money laundering and terrorist financing. Failure to comply with this obligation risks a prison term of up to two years and/or a fine.

- Regulation 21(1)(a) 1.22A Where appropriate with regard to the size and nature of its business, a firm must appoint a member of its board of directors (or equivalent management body) as the officer responsible for the firm's compliance with the ML Regulations.

- Regulation ~~4789~~ 1.23 In addition to imposing liability on firms, the ML Regulations impose criminal liability on certain individuals in firms subject to the ML Regulations. Where the firm is a body corporate, an officer of that body corporate (i.e., a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity), who consents or connives in the commission of an offence by the firm, or where that offence (by the firm) is attributable to ~~any neglect~~ the lack of supervision or control on his part, himself commits a criminal offence and may be prosecuted. Similarly, where the firm is partnership, a partner who consents to or connives in the commission of offences under the ML Regulations, or where the commission of any such offence is attributable to any neglect on his part, will be individually liable to be prosecuted for the offence. A similar rule applies to officers of unincorporated associations.

- POCA ss 327-330
Terrorism Act s
21A
Regulation ~~2+24~~ 1.24 The offences of money laundering under POCA, and the obligation to report knowledge or suspicion of possible money laundering, affect members of staff of firms. The similar offences and obligations under the Terrorism Act also affect members of staff. However, firms have an obligation under the ML Regulations to take appropriate measures to ensure that its ~~so that all relevant~~ employees and agents are made aware of the law relating to money laundering and terrorist financing (and to data protection)e, and are regularly given training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing. Guidance on meeting obligations in relation to staff training is given in Chapter 7.

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Obligations on FCA-regulated firms subject to the Senior Manager Regime

- SYSC 4.5.4 R
SYSC 4.5.7 R
SYSC 4.5.13 G 1.24A Under the SMR, deposit takers, insurers and investment banks are required to maintain a Management Responsibilities Map, which allocates prescribed responsibilities to individual SMF Managers. The management responsibility map of a small and non-complex firm is

likely to be simple and short, possibly no more than a single sheet of paper.

SYSC 4.7.5 R
SYSC 4.7.7 (4) R

1.24B

One prescribed responsibility - for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime - must be allocated to an SMF Manager. The firm may allocate this responsibility to the MLRO, but does not have to. If it is allocated to another SMF Manager, this prescribed responsibility includes responsibility for supervision of the MLRO.

Obligations on all FCA-regulated firms

1.25

A number of the financial sector firms regulated by the FCA are so-called 'common platform' firms, because they are subject both to MiFID and to the Capital Requirements Directive. The FCA Rules relating to systems and controls to prevent firms being used in connection with the commission of financial crime are in two parts: those which apply to most firms, set out in SYSC 6.1.1, and those which apply to non-common platform firms, set out in SYSC 3.2.6. To avoid confusing the vast majority of firms by including a multitude of references to SYSC 3.2.6, this guidance is constructed in terms of following the requirements of SYSC 6.1.1; non common platform firms should follow this guidance, interpreting it as referring as necessary to the relevant parts of SYSC 3.2.6.

FSMA, s 1B (5)
FSMA, s 1D (2) (b)
SYSC 2.1.1 R,
2.1.3 R, 6.1.1 R, 6.3

1.26

FSMA makes the prevention of financial crime integral to the discharge of the FCA's functions and fulfilment of its objectives. This means that the FCA is concerned that the firms it authorises and their senior management are aware of the risk of their businesses being used in connection with the commission of financial crime, and take appropriate measures to prevent financial crime, facilitate its detection and monitor its incidence. Senior management has operational responsibility for ensuring that the firm has appropriate systems and controls in place to combat financial crime.

SYSC 6.3.8 R
SYSC 4.7.7(4) R

1.27

In FCA-regulated firms (but see paragraph **1.37** for general insurance firms and mortgage intermediaries), a director or senior manager must be allocated overall responsibility for the establishment and maintenance of the firm's anti-money laundering systems and controls.

SYSC 6.3.9 R

1.28

In FCA-regulated firms (but see paragraph **1.37** for general insurance firms and mortgage intermediaries), an individual must be allocated responsibility for oversight of a firm's compliance with the FCA's Rules on systems and controls against money laundering: this is the firm's MLRO. The FCA requires the MLRO to have a sufficient level of seniority within the firm to enable him to carry out his function effectively. In some firms the MLRO will be part of senior management (and may be the person referred to in paragraph **1.27**); in firms where he is not, he will be directly responsible to someone who is.

SYSC 6.3.8 R
SYSC 6.3.9 R

1.29

Senior management of FCA-regulated firms must:

➤ ~~allocate to a director or senior manager (who may or may not~~

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~~be the MLRO) overall responsibility for the establishment and maintenance of the firm's AML/CTF systems and controls;~~

appoint an appropriately qualified senior member of the firm's staff as the MLRO (see Chapter 3); and must provide direction to, and oversight of the firm's AML/CTF strategy.

1.30 Although the FCA Rule referred to in paragraph **1.27** requires overall responsibility for AML/CTF systems and controls to be allocated to a single individual, in practice this may often be difficult to achieve, especially in larger firms. As a practical matter, therefore, firms may allocate this responsibility among a number of individuals, provided the division of responsibilities is clear.

1.31 The relationship between the MLRO and the director/senior manager allocated overall responsibility for the establishment and maintenance of the firm's AML/CTF systems (where they are not the same person) is one of the keys to an ~~successful-effective~~ AML/CTF regime. It is important that this relationship is clearly defined and documented, so that each knows the extent of his, and the other's, role and day to day responsibilities.

Regulation 21(1)(a) 1.31A

Where the firm is required to appoint a board member as the officer responsible for the firm's compliance with the ML Regulations, it is important that this individual, the MLRO and the director/senior manager allocated overall responsibility for the establishment and maintenance of the firm's AML/CTF systems (where they are not the same person) are all clear as to the responsibilities of each.

SYSC 6.3.7(2) G

1.32 At least once in each calendar year, an FCA-regulated firm should commission a report from its MLRO (see Chapter 3) on the operation and effectiveness of the firm's systems and controls to combat money laundering. In practice, senior management should determine the depth and frequency of information they feel is necessary to discharge their responsibilities. The MLRO may also wish to report to senior management more frequently than annually, as circumstances dictate.

1.33 When senior management receives reports from the firm's MLRO it should consider them and take any necessary action to remedy any deficiencies identified in a timely manner.

SUP 16.23.4 R
SUP 16.23.2 R

1.33A All firms, other than credit unions and certain firms with limited permissions and total revenues of less than £5 million, must submit an Annual Financial Crime Report to the FCA annually in respect of their financial year ending on its latest accounting reference date (see paragraphs 3.40-3.43).

SYSC 3.2.6 R,
6.3.9 (2) R

1.34 Those FCA-regulated firms required to appoint an MLRO are specifically required to provide the MLRO with adequate resources. All firms, whether or not regulated by the FCA for AML purposes, must apply adequate resources to counter the risk that they may be used for the purposes of financial crime. This includes establishing, and monitoring the effectiveness of, systems and controls to prevent ML/TF. The level of resource should reflect the size, complexity and geographical spread of the firm's customer and product base.

- 1.35 The role, standing and competence of the MLRO, and the way the internal processes for reporting suspicions are designed and implemented, impact directly on the effectiveness of a firm's money laundering/terrorist financing prevention arrangements.
- 1.36 As well as supervisory expectations (as referred to in paragraph 1.20), firms should be aware of the FCA's formal findings in relation to individual firms, and its actions in response to these; this information is available on the list of Final Notices on the FCA website at <http://www.fca.org.uk/firms/being-regulated/enforcement/outcomes-notices>?

Exemptions from legal and regulatory obligations

- | | | |
|--|------|--|
| SYSC 1.1A.1,
3.2.6 R | 1.37 | General insurance firms and mortgage intermediaries are regulated by the FCA, but are not covered by the ML Regulations, or <u>by</u> the provisions of SYSC specifically relating to money laundering. They are, therefore, under no obligation to appoint an MLRO. They are, however, subject to the general requirements of SYSC, and so have an obligation to have appropriate risk management systems and controls in place, including controls to counter the risk that the firm may be used to further financial crime. Guidance for general insurance firms is given in Part II, sector 7A: <i>General insurers</i> . |
| POCA ss 327-329,
335, 338
Terrorism Act s 21 | 1.38 | These firms are also subject to the provisions of POCA and the Terrorism Act which establish the primary offences. These offences are not committed if a person's knowledge or suspicion is reported to the NCA, and appropriate consent for the transaction or activity obtained. Certain of these firms may also be subject to the provisions of Schedule 7 to the Counter-Terrorism Act 2008 – see Part III, section 5, especially paragraph 5.11. |
| POCA s 332
Terrorism Act ss
19, 21 | 1.39 | For administrative convenience, and to assist their staff fulfil their obligations under POCA or the Terrorism Act, general insurance firms and mortgage intermediaries may choose to appoint a nominated officer. Where they do so, he will be subject to the reporting obligations in s 332 of POCA and s 19 of the Terrorism Act (see Chapter 6). |
| | 1.40 | E-money issuers and payment institutions are authorised under the Electronic Money Regulations and the Payment Services Regulations, rather than FSMA. This means that they are subject to the AML/CTF provisions in legislation, but not to most of the FCA's Handbook rules. The FCA has issued guidance that sets out its expectations of e-money issuers' and payment institutions' AML/CTF controls: <ul style="list-style-type: none"> • http://www.fca.org.uk/static/documents/emoney-approach.pdf for e-money issuers; • http://www.fca.org.uk/your-fca/documents/payment-services-approach for payment institutions; and • http://fshandbook.info/FS/html/FCA/FC for both. |

Guidance for e-money issuers is also set out in Part II Sector 3.

Senior management should adopt a formal policy, and carry out a risk assessment, in relation to financial crime prevention

<p>SYSC 3.1.1 R, 3.2.6 R 6.1.1 R 6.3.1 R Regulation 16(2)</p>	<p>1.41</p>	<p>As mentioned in paragraph 1.1 above, senior management in FCA-regulated firms has a responsibility to ensure that the firm's <u>policies, controls and processes and</u> procedures are appropriately designed and implemented, and are effectively operated to manage the firm's risks. This includes <u>taking appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject, the risk of the firm being used to further financial crime. This assessment should take into account relevant findings in the UK national risk assessment of money laundering and terrorist financing.</u></p>
<p>Regulation 18</p>	<p>1.41A</p>	<p><u>A firm's risk assessment must be documented, kept up-to-date and made available to the FCA on request. The FCA may decide that a documented risk assessment is not required in the case of a particular firm, where the specific risks inherent in the sector in which the firm operates are clear and understood.</u></p>
<p>SYSC 6.3.7 (3) G</p>	<p>1.42</p>	<p>For FCA-regulated firms (but see paragraph 1.37 for general insurance firms and mortgage intermediaries, and 1.40 for e-money issuers and payment institutions) SYSC 6.3.7 (3) G says that a firm should produce "appropriate documentation of [its] risk management policies and risk profile in relation to money laundering, including documentation of <u>that firm's</u> application of those policies".</p>
	<p>1.42A</p>	<p>A statement of the firm's AML/CTF policy and the <u>controls and</u> procedures to implement it will clarify how the firm's senior management intends to discharge its responsibility for the prevention of money laundering and terrorist financing. This will provide a framework of direction to the firm and its staff, and will identify named individuals and functions responsible for implementing particular aspects of the policy. The policy will also set out how senior management undertakes its assessment of the money laundering and terrorist financing risks the firm faces, and how these risks are to be managed. Even in a small firm, a summary of its high-level AML/CTF policy will focus the minds of staff on the need to be constantly aware of such risks, and how they are to be managed.</p>
	<p>1.43</p>	<p>A policy statement should be tailored to the circumstances of the firm. Use of a generic document might reflect adversely on the level of consideration given by senior management to the firm's particular risk profile.</p>
	<p>1.44</p>	<p>The policy statement might include, but not be limited to, such matters as:</p> <ul style="list-style-type: none"> ➤ Guiding principles: <ul style="list-style-type: none"> ○ an unequivocal statement of the culture and values to be adopted and promulgated throughout the firm towards the prevention of financial crime;

- a commitment to ensuring that customers' identities will be satisfactorily verified before the firm accepts them;
- a commitment to the firm 'knowing its customers' appropriately - both at acceptance and throughout the business relationship - through taking appropriate steps to verify the customer's identity and business, and his reasons for seeking the particular business relationship with the firm;
- a commitment to ensuring that staff are trained and made aware of the law and their obligations under it, and to establishing procedures to implement these requirements; and
- recognition of the importance of staff promptly reporting their suspicions internally.

➤ Risk mitigation approach:

- a summary of the firm's approach to [mitigating and managing effectively the risks of money laundering and terrorist financing it identifies](#)~~assessing and managing its money laundering and terrorist financing risk~~;
- allocation of responsibilities to specific persons and functions;
- a summary of the firm's [controls and](#) procedures for carrying out appropriate identification and monitoring checks on the basis of their risk-based approach; and
- a summary of the appropriate monitoring arrangements in place to ensure that the firm's policies and procedures are being carried out.

1.45 It is important that the firm's policies, [controls](#) and procedures are communicated widely throughout the firm, to increase the effectiveness of their implementation.

Application of group policies outside the UK

1.46 The UK legal and regulatory regime is primarily concerned with preventing money laundering which is connected with the UK. Where a UK financial institution has overseas branches, [subsidiary undertakings](#) or associates, where control can be exercised over business carried on outside the United Kingdom, or where elements of its UK business have been outsourced to offshore locations (see [paragraphs 2.8-2.12](#)), the firm must put in place a group AML/CTF strategy.

Regulation
([20\(1\)](#))

45 1.47

A ~~firm that is a group policy~~[parent undertaking](#) must ensure that [its policies, controls and procedures apply to all subsidiary undertakings and non-UK EEA branches. Such a firm must establish and maintain throughout its group, policies, controls and procedures for data protection and sharing, with other members of the group, information for the purposes of preventing money laundering and terrorist financing. and subsidiaries carry out CDD measures, and keep](#)

~~records, at least to the standards required under UK law or, if the standards in the host country are more rigorous, to those higher standards.~~ Reporting processes must nevertheless follow local laws and procedures.

~~Regulation 20(5)~~

~~1.48~~

~~Firms must communicate their policies and procedures established to prevent activities related to money laundering and terrorist financing to branches and subsidiaries located outside the UK.~~

Regulation
~~15(2)20(3),(4)~~

1.49

If any subsidiary undertaking or branch is established in a third country which does not impose AML/CTF requirements as strict as those of the UK, the firm must ensure that such subsidiary undertakings or branches apply measures equivalent to those required by the ML Regulations. Where the law of a non-EEA state does not permit the application of such equivalent measures, the firm must inform the FCA accordingly, and take additional measures to handle ~~effectively~~ the risk of money laundering and ~~or~~ terrorist financing effectively.

Regulation 19(6)

1.48

Firms must communicate their policies, controls and procedures established to prevent activities related to money laundering and terrorist financing to branches and subsidiary undertakings located outside the UK.

1.50

Whilst suspicions of money laundering or terrorist financing may be required to be reported within the jurisdiction where the suspicion arose and where the records of the related transactions are held, there may also be a requirement for a report to be made to the NCA (see paragraph 6.25).

Extra-territoriality of some overseas jurisdictions' regimes

1.51

Where a firm has a listing in, or activities in, or linked to, certain overseas jurisdictions, whether through a branch, subsidiary undertaking, associated company or correspondent banking relationship, or where a firm deals in another jurisdiction's currency, there is a risk that the application of that jurisdiction's AML/CTF and financial sanctions regimes may apply to the non-domestic activities of the firm. Senior management should take advice on the extent to which the firm's activities may be affected in this way.

CHAPTER 2

INTERNAL CONTROLS

<p>➤ Relevant law/regulation</p> <ul style="list-style-type: none"> ▪ Regulations 2019 - 24, 21 ▪ SYSC Chapters 2, 3, 3A, 6
<p>➤ Core obligations</p> <ul style="list-style-type: none"> ▪ Firms must establish and maintain adequate and appropriate policies and procedures to forestall and prevent operations relating to money laundering ▪ Appropriate controls should take account of the risks faced by the firm's business
<p>➤ Actions required, to be kept under regular review</p> <ul style="list-style-type: none"> ▪ Establish and maintain adequate and appropriate policies and procedures to forestall and prevent money laundering ▪ Introduce appropriate controls to take account of the risks faced by the firm's business ▪ Maintain appropriate control and oversight over outsourced activities

General legal and regulatory obligations

General

Regulation 1920 (1)(a) SYSC 3, 6	2.1	There is a requirement for firms Firms are required to establish and maintain appropriate and risk based policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in its risk assessment. in order to prevent operations related to money laundering or terrorist financing. FCA-regulated firms have similar, regulatory obligations under SYSC.
	2.2	This chapter provides guidance on the internal controls that will help firms meet their obligations in respect of the prevention of money laundering and terrorist financing. There are general obligations on firms to maintain appropriate records and controls more widely in relation to their business; this guidance is not intended to replace or interpret these wider obligations.

Appropriate controls in the context of financial crime prevention

Regulation 1920 (1)(b), (2)	2.2A	A firm's policies, controls and procedures must be proportionate with regard to the size and nature of its business, and must be approved by its senior management. A firm must maintain a written record of its policies, controls and procedures.
Regulations 1920 , 21(1)	2.3	There are specific requirements under the ML Regulations for the firm to establish adequate and appropriate policies, controls and procedures relating to: internal controls, including where appropriate employee screening and the appointment of an internal audit function ; risk assessment and management management practices (see Chapter 4); customer due diligence and ongoing monitoring (see Chapter 5); record keeping (see Chapter 8); reporting of suspicions (see Chapter 6); the monitoring and management of the effectiveness of, and compliance with, such policies and procedures, (see paragraphs 3.28-3.30) ; and the internal communication of such policies and procedures

(which includes staff awareness and training) (see Chapter 7).

~~The ML Regulations are not specific about what these controls should comprise, and so it is helpful to look to the FCA Handbook, which although only formally applying to FCA regulated firms, provides helpful commentary on overall systems requirements.~~

Internal controls- specific requirements

<u>Regulation 21(1)</u>	<u>2.3A</u>	<p><u>Where appropriate with regard to the size and nature of its business, a firm must</u></p> <ul style="list-style-type: none"> ➤ <u>Appoint a member of its board (or equivalent management body) as the officer responsible for the firm's compliance with the ML Regulations;</u> ➤ <u>Carry out screening of relevant employees and agents appointed by the firm, both before the appointment is made, and at regular intervals during the course of the appointment;</u> ➤ <u>Establish an independent internal audit function with responsibility to:</u> <ul style="list-style-type: none"> ○ <u>examine and evaluate the adequacy and effectiveness of the policies, controls and procedures adopted by the firm to comply with the requirements of the ML Regulations;</u> ○ <u>make recommendations in relation to those policies, controls and procedures; and</u> ○ <u>monitor the firm's compliance with those recommendations.</u>
<u>Regulation 21(3), (4)</u>	<u>2.3B</u>	<p><u>An individual in the firm must be appointed as a nominated officer, whose identity, as well as any subsequent appointment to this position, must be notified to their supervisor. The firm must also notify their supervisor of the name of the member of its board (or equivalent management body), and of any subsequent appointment to this position, as the officer responsible for the firm's compliance with the ML Regulations.</u></p>
<u>Regulation 21(2)(a)</u>	<u>2.3C</u>	<p><u>Screening of relevant employees means an assessment of:</u></p> <ul style="list-style-type: none"> ➤ <u>the skills, knowledge and expertise of the individual to carry out their functions effectively; and</u> ➤ <u>the conduct and integrity of the individual.</u>
<u>Regulation 21(2)(b)</u>	<u>2.3D</u>	<p><u>A relevant employee is one whose work is –</u></p> <ul style="list-style-type: none"> ➤ <u>relevant to the firm's compliance with any requirement in the ML Regulations; or</u> ➤ <u>otherwise capable of contributing to the</u> <ul style="list-style-type: none"> ○ <u>identification or mitigation of the risks of ML/TF to which the firm is subject; or</u> ○ <u>prevention or detection of ML/TF in relation to the firm's business.</u>
<u>Regulation 19(4)</u>	<u>2.3E</u>	<p><u>A firm's policies, controls and procedures must include policies, controls and procedures:</u></p> <ul style="list-style-type: none"> ➤ <u>which provide for the identification and scrutiny of</u>

- complex or unusually large transactions;
- unusual patterns of transactions which have no apparent economic or legal purpose; and
- any other activity which the firm regards as particularly likely by its nature to be related to money laundering or terrorist financing.
- which specify the undertaking of additional measures, where appropriate, to prevent the use for money laundering or terrorist financing of products or transactions which might favour anonymity;
- which ensure that when new technology is adopted by the firm, appropriate measures are taken to assess, and if necessary, mitigate, any money laundering or terrorist financing risks this may cause;
- under which anyone in the firm who knows or suspects (or has reasonable grounds for knowing or suspecting) money laundering or terrorist financing is required to report such knowledge or suspicion to the firm's nominated officer.

Firms should also have in place policies, controls and procedures to assess and mitigate the risks arising from remote booking arrangements.

Regulation 21(8),(9)

2.3F

Firms must establish and maintain systems which enable it to respond fully and rapidly to enquiries from financial investigators accredited under s3 of POCA, persons acting on behalf of the Scottish Ministers in their capacity as an enforcement authority under the Act, officers of HMRC or constables, relating to:

- whether it maintains, or has maintained during the previous five years, a business relationship with any person; and
- the nature of that relationship.

2.3G

As well as considering the provisions of the ML Regulations about what internal controls should comprise, it could be helpful to look to the FCA Handbook, which although only applying to FCA-regulated firms, provides helpful commentary on overall systems requirements.

SYSC 3.1.1 R
SYSC 3.1.2 G
SYSC 6.1.1 R
SYSC 6.1.2R

2.4

FCA-regulated firms are required to have systems and controls appropriate to their business. Specifically, those systems and controls must include measures 'for countering the risk that the firm might be used to further financial crime'. Financial crime includes the handling of the proceeds of crime – that is, money laundering or terrorist financing. The nature and extent of systems and controls will depend on a variety of factors, including:

- the nature, scale and complexity of the firm's business;
- the diversity of its operations, including geographical diversity;
- its customer, product and activity profile;
- its distribution channels;
- the volume and size of its transactions; and

- the degree of risk associated with each area of its operation.

SYSC 6.3.1 R 2.5 An FCA-regulated firm must ensure that these systems and controls:

- enable it to identify, assess, monitor and manage money laundering risk; and
- are comprehensive and proportionate to the nature, scale and complexity of its activities.

SYSC 6.3.7 G 2.6 An FCA-regulated firm's systems and controls (but see paragraph
SYSC 6.3.8 R [1.37](#) for general insurance firms and mortgage intermediaries) are
SYSC 6.3.9 R required to cover senior management accountability, including allocation to a director or senior manager of overall responsibility for the establishment and maintenance of effective AML systems and controls and the appointment of a person with adequate seniority and experience as MLRO. The systems and controls should also cover:

- appropriate training on money laundering to ensure that employees are aware of, and understand, their legal and regulatory responsibilities and their role in handling criminal property and money laundering/terrorist financing risk management;
- appropriate provision of regular and timely information to senior management relevant to the management of the firm's criminal property/money laundering/terrorist financing risks;
- appropriate documentation of the firm's risk management policies and risk profile in relation to money laundering, including documentation of the firm's application of those policies; and
- appropriate measures to ensure that money laundering risk is taken into account in the day-to-day operation of the firm, including in relation to:
 - the development of new products;
 - the taking-on of new customers; and
 - changes in the firm's business profile.

2.7 It is important that the firm's policies, [controls](#) and procedures are communicated widely throughout the firm, to increase the effectiveness of their implementation.

Outsourcing and non-UK processing

[SYSC 3.2.4 G](#) 2.8 Many firms outsource some of their systems and controls and/or
[SYSC 13.9](#) processing to elsewhere within the UK and to other jurisdictions, and/or to other group companies. Involving other entities in the operation of a firm's systems brings an additional dimension to the risks that the firm faces, and this risk must be actively managed. It is in the interests of the firm to ensure that outsourcing does not result in reduced standards or requirements being applied. ~~In all cases, the firm should have regard to the FCA's guidance on outsourcing.~~

[Regulation 38\(7\)\(8\)](#) [2.8A](#) [Nothing in the ML Regulations prevents a firm applying CDD measures by means of an agent or an outsourcing service provider \(but](#)

[see paragraphs 5.3.39A to 5.3.41 in Part I, Chapter 5\), provided that the arrangements between the firm and the agent or outsourcing service provider provide for the firm to remain liable for any failure to apply such measures.](#)

SYSC 3.2.4 G
SYSC 13.9

- 2.9 FCA-regulated firms cannot contract out of their regulatory responsibilities, and therefore remain responsible for systems and controls in relation to the activities outsourced, whether within the UK or to another jurisdiction. In all instances of outsourcing it is the delegating firm that bears the ultimate responsibility for the duties undertaken in its name. This will include the requirement to ensure that the provider of the outsourced services has in place satisfactory AML/CTF systems, controls and procedures, and that those policies and procedures are kept up to date to reflect changes in UK requirements.
- 2.10 Where UK operational activities are undertaken by staff in other jurisdictions (for example, overseas call centres), those staff should be subject to the AML/CTF policies and procedures that are applicable to UK staff, and internal reporting procedures implemented to ensure that all suspicions relating to UK-related accounts, transactions or activities are reported to the nominated officer in the UK. Service level agreements will need to cover the reporting of management information on money laundering prevention, and information on training, to the MLRO in the UK.
- 2.11 Firms should also be aware of local obligations, in all jurisdictions to which they outsource functions, for the detection and prevention of financial crime. Procedures should be in place to meet local AML/CTF regulations and reporting requirements. Any conflicts between the UK and local AML/CTF requirements, where meeting local requirements would result in a lower standard than in the UK, should be resolved in favour of the UK.
- 2.12 In some circumstances, the outsourcing of functions can actually lead to increased risk - for example, outsourcing to businesses in jurisdictions with less stringent AML/CTF requirements than in the UK. All financial services businesses that outsource functions and activities should therefore assess any possible AML/CTF risk associated with the outsourced functions, record the assessment and monitor the risk on an ongoing basis.

CHAPTER 3**NOMINATED OFFICER/MONEY LAUNDERING REPORTING OFFICER (MLRO)**

<p>➤ Relevant law/regulation</p> <ul style="list-style-type: none"> ▪ Regulation 21 ▪ COCON0 ▪ PRIN, Principle 11 ▪ APER, Chapters 2 and 4 ▪ APER, Principles 4 and 7 ▪ SYSC, Chapter 6 ▪ SUP, Chapter 10
<p>➤ Core obligations</p> <ul style="list-style-type: none"> ▪ Nominated officer to be appointed, who must receive and review internal disclosures ▪ Nominated officer is responsible for making external reports ▪ FCA approval required for MLRO (who may also be the nominated officer), as it is a designated Controlled Senior Management Function (SMFCF 17+) ▪ Threshold competence required ▪ MLRO should be able to act on his own authority ▪ Adequate resources must be devoted to AML/CFT ▪ MLRO is responsible for oversight of the firm's AML systems and controls
<p>➤ Actions required, to be kept under regular review</p> <ul style="list-style-type: none"> ▪ Appoint a nominated officer ▪ Senior management to ensure the MLRO has: <ul style="list-style-type: none"> ○ active support of senior management ○ adequate resources ○ independence of action ○ access to information ○ an obligation to produce an annual report ▪ MLRO to ensure he has continuing competence ▪ MLRO to monitor the effectiveness of systems and controls

General legal and regulatory obligations

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Legal obligations

<p>Regulation 20(2)(b)21 (3) 3.1 POCA ss337, 338 Terrorism Act ss21A, 21B</p>	<p>3.1</p>	<p>All firms (other than sole traders) carrying out relevant business under the ML Regulations, whether or not the firm is regulated by the FCA, must appoint a nominated officer, who is responsible for receiving disclosures under Part 7 of POCA and Part 3 of the Terrorism Act, deciding whether these should be reported to the NCA, and, if appropriate, making such external reports.</p>
	<p>3.2</p>	<p>A sole trader with no employees who knows or suspects, or where there are reasonable grounds to know or suspect, that a customer of his, or the person on whose behalf the customer is acting, is or has been engaged in, or attempting, money laundering or terrorist financing, must make a report promptly to the NCA.</p>
<p>Regulation 21(1)(a) 3.2A</p>		<p>Where appropriate with regard to the size and nature of its business, a firm must appoint a member of its board of directors (or equivalent management body) as the officer responsible for the firm's compliance</p>

[with the ML Regulations.](#)*Regulatory obligations*

SYSC 6.3.9 R SUP 10C.4.3 R	3.3	In the case of FCA-regulated firms, other than sole traders with no employees and those firms covered by paragraph 3.2 , there is a requirement to appoint an MLRO. The responsibilities of the MLRO under SYSC are different from those of the nominated officer under the ML Regulations, POCA or the Terrorism Act, but in many FCA-regulated firms it is likely that the MLRO and the nominated officer will be one and the same person. When discharging different legal and regulatory functions, it is important that the individual is aware which role he is acting in.
SYSC 6.3.9(1) R	3.4	The MLRO is responsible for oversight of the firm's compliance with the FCA's Rules on systems and controls against money laundering.
Regulation 21(8)	3.5	An MLRO should be able to monitor the day-to-day operation of the firm's AML/CTF policies, and respond promptly-fully and rapidly to any reasonable enquiries request for information made by the FCA or law enforcement.
PRIN 2.1.1 APER 2.1A.3	3.5A	Under FCA Principle 11 of its Principles for Businesses, an FCA-regulated firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which the FCA would reasonably expect notice. The MLRO is personally required to deal with the FCA similarly, under Principle 4 of its Statement of Principles.
SYSC 1.1A.1 SYSC 3.2.6R	3.6	As noted in paragraph 1.37 , general insurance firms and mortgage intermediaries are not covered by the ML Regulations, s 330 of POCA, s 21A of the Terrorism Act, or the provisions of SYSC relating specifically to money laundering. They are, however, regulated by the FCA and may be subject to the certain disclosure obligations in POCA and the Terrorism Act. They therefore are under no obligation to appoint a nominated officer or an MLRO, or to allocate to a director or senior manager the responsibility for the establishment and maintenance of effective anti-money laundering systems and controls. They are, however, subject to the general requirements of SYSC, and so have an obligation to have appropriate risk management systems and controls in place, including controls to counter the risk that the firm might be used to further financial crime. They are also subject to ss 337 and 338 of POCA and s 19 of the Terrorism Act.
POCA s 332 Terrorism Act s 19	3.7	For administrative convenience, and to assist their staff fulfil their obligations under POCA or the Terrorism Act, firms who have no legal obligation to do so, may nevertheless choose to appoint a nominated officer. Where they do so, he will be subject to the reporting obligations in s 332 of POCA and s 19 of the Terrorism Act.

Standing of the MLRO

SUP 10.7.13 R SYSC 6.3.10 G FSMA s59	3.8	The role of MLRO has been designated by the FCA as a controlled/ Senior Management function under s 59 of FSMA. As a consequence, any person invited to perform that function must be individually approved by the FCA, on the application of the firm, before performing the function. The FCA expect that the MLRO will be based in the UK.
APER 4.7.9 E APER, Principle 7	3.9	Failure by the MLRO to discharge the responsibilities imposed on him in SYSC 6.3.9 R is conduct that does not comply with Statement of Principle 7 for Approved Persons, namely that 'an approved person performing an accountable higher management – significant influence function must take reasonable steps to ensure that the business of the firm for which he they is are responsible in his their controlled accountable function capacity complies with the relevant requirements and standards of the regulatory system'.
SYSC 6.3.9 R SYSC 6.3.10 G	3.10	In FCA-regulated firms, the MLRO is responsible for the oversight of all aspects of the firm's AML/CTF activities and is the focal point for all activity within the firm relating to anti-money laundering. The individual appointed as MLRO must have a sufficient level of seniority within the firm (see paragraph 1.28). As the MLRO is an Approved Person/Approved PersonSMF Manager , his job description should clearly set out the extent of the responsibilities given to him, and his objectives. The MLRO will need to be involved in establishing the basis on which a risk-based approach to the prevention of money laundering/terrorist financing is put into practice.
SYSC 4.4.7(4) SYSC 6.3.9(1) R SYSC 6.3.10 G	3.11	Along with the Director/SeniorSMF Manager appointed by the Board (see paragraph 1.27), an MLRO will support and co-ordinate senior management focus on managing the money laundering/terrorist financing risk in individual business areas. He will also help ensure that the firm's wider responsibility for forestalling and preventing money laundering/terrorist financing is addressed centrally, allowing a firm-wide view to be taken of the need for monitoring and accountability.
	3.12	As noted in paragraph 1.31 , the relationship between the MLRO and the director(s)/senior manager(s) allocated overall responsibility for the establishment and maintenance of the firm's AML/CTF systems is one of the keys to an effective successful AML/CTF regime. It is important that this relationship is clearly defined and documented, so that each knows the extent of his, and the other's, role and day to day responsibilities.
Regulation 21(1)(a)	3.12A	Where the firm is required to appoint a board member as the officer responsible for the firm's compliance with the ML Regulations, it is important that this individual, the MLRO and the director(s)/senior manager(s) allocated overall responsibility for the establishment and maintenance of the firm's AML/CTF systems (see paragraph 3.12) are all clear as to the responsibilities of each.
SYSC 6.3.9(2)R	3.13	The MLRO must have the authority to act independently in carrying out his responsibilities. The MLRO must be free to have direct access

to the FCA and (where he is the nominated officer) appropriate law enforcement agencies, including the NCA, in order that any suspicious activity may be reported to the right quarter as soon as is practicable. He must be free to liaise with the NCA, on his own authority, on any question of whether to proceed with a transaction in the circumstances.

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| SYSC 6.3.9 (2)R | 3.14 | Senior management of the firm must ensure that the MLRO has sufficient resources available to him, including appropriate staff and technology. This should include arrangements to apply in his temporary absence. |
| | 3.15 | Where a firm is part of a group, it may appoint as its MLRO an individual who performs that function for another firm within the group. If a firm chooses this approach, it may wish to permit the MLRO to delegate AML/CTF duties to other suitably qualified individuals within the firm. Similarly, some firms, particularly those with a number of branches or offices in different locations, may wish to permit the MLRO to delegate such duties within the firm. In larger firms, because of their size and complexity, the appointment of one or more permanent Deputy MLROs of suitable seniority may be necessary. In such circumstances, the principal, or group MLRO needs to ensure that roles and responsibilities within the group are clearly defined, so that staff of all business areas know exactly who they must report suspicions to. |
| SUP 10.5.5R | 3.16 | Where an MLRO is temporarily unavailable, no pre-approval for a deputy will be required for temporary cover of up to 12 weeks in any consecutive 12-month period. For longer periods, however, FCA approval will need to be sought. Rather than appointing a formal deputy, smaller firms may prefer to rely on temporary cover. |
| | 3.17 | Where AML/CTF tasks are delegated by a firm's MLRO, the FCA will expect the MLRO to take ultimate managerial responsibility. |

Internal and external reports

- | | | |
|--|------|---|
| Regulation
20(2)(d) 19(4)(d)
POCA s 330 | 3.18 | A firm must require that anyone in the firm to whom information or other matter comes in the course of business as a result of which they know or suspect, or have reasonable grounds for knowing or suspecting, that a person is engaged in money laundering or terrorist financing complies with Part 7 of POCA or Part 3 of the Terrorism Act (as the case may be). This includes staff having an obligation to make an internal report to the nominated officer as soon as is reasonably practicable after the information or other matter comes to them. |
| | 3.19 | Any internal report should be considered by the nominated officer, in the light of all other relevant information, to determine whether or not the information contained in the report does give rise to knowledge or suspicion, or reasonable grounds for knowledge or suspicion, of money laundering or terrorist financing. |
| | 3.20 | A firm is expected to use its existing customer information effectively |

by making such information readily available to its nominated officer.

- 3.21 In most cases, before deciding to make a report, the nominated officer is likely to need access to the firm's relevant business information. A firm should therefore take reasonable steps to give its nominated officer access to such information. Relevant business information may include details of:
- the financial circumstances of a customer or beneficial owner, or any person on whose behalf the customer has been or is acting; and
 - the features of the transactions, including, where appropriate, the jurisdiction in which the transaction took place, which the firm entered into with or for the customer (or that person); and
 - the underlying CDD information, and copies of the actual source documentation in respect of the customer.
- 3.22 In addition, the nominated officer may wish:
- to consider the level of identity information held on the customer, and any information on his personal circumstances that might be available to the firm; and
 - to review other transaction patterns and volumes through the account or accounts in the same name, the length of the business relationship and identification records held.
- 3.23 If the nominated officer (or appointed alternate) concludes that the internal report does give rise to knowledge or suspicion of money laundering or terrorist financing, he must make a report to the NCA as soon as is practicable after he makes this determination. The nominated officer (or appointed alternate)'s decision in this regard must be his own, and should not be subject to the direction or approval of other parties within the firm.
- 3.24 Guidance on reviewing internal reports, and reporting as appropriate to the NCA, is set out in Chapter 6.

[Regulation 19\(4\)\(d\)](#)
[Regulation 21\(4\)\(2\)\(d\)](#)
 POCA s 331

National and international findings in respect of countries and jurisdictions

- 3.25 An MLRO should ensure that the firm obtains, and makes appropriate use of, any government or FATF findings concerning the approach to money laundering prevention in particular countries or jurisdictions. This is especially relevant where the approach has been found to be materially deficient by FATF. Reports on the mutual evaluations carried out by the FATF can be found at www.fatf-gafi.org. FATF-style regional bodies also evaluate their members. Not all evaluation reports are published (although there is a presumption that those in respect of FATF members will be). Where an evaluation has been carried out and the findings are not published, firms will take this fact into account in assessing the money laundering and terrorist financing risks posed by the jurisdiction in question. Depending on the firm's area of operation, it may be appropriate to take account of other

international findings, such as those by the IMF or World Bank.

- [3.25A](#) [Under the Fourth Money Laundering directive, the European Commission is empowered to identify high risk third countries with strategic deficiencies in the area of anti-money laundering or countering terrorist financing. The Commission adopted Delegated Regulation 2016/1675 in July 2016. See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L.2016.254.01.0001.01.ENG>. The MLRO should be aware of such lists.](#)
- [3.25B](#) [Countries may also be assessed using publicly available indices from, for example, HM Treasury Sanctions¹², FATF high-risk and non-cooperative jurisdictions¹³, MoneyVal evaluations¹⁴, Transparency International Corruption Perception Index¹⁵, FCO Human Rights Report¹⁶, UK Trade and Investment overseas country risk pages¹⁷ and quality of regulation¹⁸.](#)
- [3.27](#) [Firms considering business relations and transactions with individuals and firms – whether direct or through correspondents - located in higher risk jurisdictions, or jurisdictions against which the UK has outstanding advisory notices, should take account of the background against which the assessment, or the specific recommendations contained in the advisory notices, have been made.](#)
- 3.26 Additionally, the NCA periodically produces intelligence assessments, which are forwarded to the MLROs of the relevant sectors for internal dissemination only. No NCA material is published through an open source.

Monitoring effectiveness of money laundering controls

- SYSC 6.3.3 R
SYSC 6.3.9(1) R
SYSC 6.3.10 G
[Regulation 20\(1\)\(f\)](#)
- 3.28 A firm is required to carry out regular assessments of the adequacy of its systems and controls to ensure that they manage the money laundering risk effectively. Oversight of the implementation of the firm's AML/CTF policies and procedures, including the operation of the risk-based approach, is [primarily](#) the responsibility of the MLRO, under delegation from senior management. He must therefore ensure that appropriate monitoring processes and procedures across the firm are established and maintained.
- [Regulation 21\(1\)](#) [3.28A](#) [However, where appropriate with regard to the size and nature of its business, a firm must establish an independent internal audit function with responsibility for:](#)
- [examining and evaluating the adequacy and effectiveness of the](#)

¹² <http://hmt-sanctions.s3.amazonaws.com/sanctionsconlist.pdf>

¹³ <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/>

¹⁴ <http://www.coe.int/t/dghl/monitoring/moneyval/>

¹⁵ <http://cpi.transparency.org/cpi2013/results/>

¹⁶ <http://www.hrdreport.fco.gov.uk/>

¹⁷ <http://www.ukti.gov.uk/export/howwehelp/overseasbusinessrisk/countries.html>

¹⁸ <http://www.state.gov/eb/rls/othr/ics/2013/index.htm>

- [policies, controls and procedures adopted by the firm to comply with the requirements of the ML Regulations;](#)
 ➤ [making recommendations in relation to those policies, controls and procedures; and](#)
 ➤ [monitoring the firm's compliance with those recommendations.](#)

- 3.29 Effectiveness of systems and controls is [therefore](#) driven by a combination of features, including:
- ensuring that policies and procedures reflect current legal and regulatory developments and requirements;
 - having appropriate monitoring processes, with timely follow up of findings;
 - the adequacy of resources available;
 - appropriate monitoring of outsourced compliance arrangements;
 - adequately trained staff, who are up to date with current developments;
 - having appropriate quality control/internal review processes;
 - [appropriate management information made available to senior management and those with supervisory responsibilities;](#)
 - [the work of any internal audit function.](#)

[MLR 15 Regulation 20](#) 3.30

The effective operation of group systems and controls in non-EEA branches and [subsidiaries/undertakings](#) will be influenced by the ability of the group to ensure that these can be followed without local restrictions, whether in law or otherwise (see [paragraphs 1.47 - 1.49](#)).

Reporting to senior management

- SYSC 6.3.7(2) G 3.31 At least annually the senior management of an FCA-regulated firm should commission a report from its MLRO which assesses the operation and effectiveness of the firm's systems and controls in relation to managing money laundering risk.
- 3.32 In practice, senior management should determine the depth and frequency of information they feel necessary to discharge their responsibilities. [The information provided in the FCA Annual Financial Crime Return may provide some of the material required for this purpose.](#) The MLRO may also wish to report to senior management more frequently than annually, as circumstances dictate.
- 3.33 The firm's senior management should consider the report, and take any necessary action to remedy deficiencies identified in it, in a timely manner.
- 3.34 The MLRO will wish to bring to the attention of senior management areas where the operation of AML/CTF controls should be improved, and proposals for making appropriate improvements. The progress of any significant remedial programmes will also be reported to senior management.
- 3.35 In addition, the MLRO should report on the outcome of any relevant quality assurance or internal audit reviews of the firm's AML/CTF

processes, as well as the outcome of any review of the firm's risk assessment procedures (see paragraph 4.68).

- 3.36 Firms will need to use their judgement as to how the MLRO should be required to break down the figures of internal reports in his annual report.
- 3.37 In December 2006, after discussion with the FCA, JMLSG issued a template suggesting a suitable presentation and content framework for a working paper underpinning the production of the MLRO Annual Report. [see www.jmlsg.org.uk]
- 3.38 An MLRO may choose to report in a different format, according to the nature and scope of their firm's business.
- 3.39 In practice, subject to the approval of the FCA, larger groups might prepare a single consolidated report covering all of its authorised firms. The MLRO of each authorised firm within the group still has a duty to report appropriately to the senior management of his authorised firm.

Reporting to the FCA

- [3.40](#) The MLRO is likely to be responsible for the preparation and submission of the Annual Financial Crime Report required by the FCA.
- [SUP 16.23.4 R](#)
[SUP 16.23.2 R](#) [3.41](#) All firms, other than credit unions and certain firms with limited permissions and total revenues of less than £5 million, must submit an Annual Financial Crime Report to the FCA annually in respect of their financial year ending on its latest accounting reference date.
- [SUP 16.23.5 R](#) [3.42](#) If a group includes more than one firm, a single Annual Financial Crime Report may be submitted, and so satisfy the requirements of all firms in the group, where all the firms included in the single report have the same accounting reference date.
- [SUP 16.23.6 R](#)
[SUP 16.23.7 R](#) [3.43](#) A firm must submit the Annual Financial Crime Report in the form specified in SUP 16 Annex 42AR, using the appropriate online systems accessible from the FCA website (www.fca.org.uk). The Report must be submitted within 60 business days of the firm's accounting reference date.