

Anti-Money Laundering Capabilities



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Anti-money laundering (AML) issues present compliance challenges for even the most sophisticated financial institutions. When it comes to these areas of the law, “getting it wrong” can result in long standing reputational damage and substantial cost both in terms of financial penalties and added compliance burdens.

Mayer Brown’s AML related practice are designed to accomplish two goals. First, we seek to avoid unwanted outcomes by counseling clients on day-to-day compliance and the complexities of areas of applicable law as they apply in the United States, United Kingdom, Europe, the Middle East or Asia. Second, when problems arise, we help clients determine the scope of the problem, investigate its root causes, assess potential liabilities, fashion appropriately remedial responses and determine whether self-disclosure to regulatory authorities is warranted. If regulators decide to take enforcement action or to investigate, we defend clients and, if necessary, assist with the successful management of the conditions imposed under a governmental settlement agreement.

AML Counseling

Partners in our Financial Services Regulatory & Enforcement practice have been at the forefront of providing AML compliance advice since immediately after the terrorist attacks on the World Trade Center on September 11, 2001. In the aftermath of that tragic day, we were part of industry/governmental working groups that collaborated on drafting the AML provisions that were incorporated into the USA Patriot Act. Since then, we have been actively involved in every regulatory initiative undertaken pursuant to the USA Patriot Act, including, most recently, the modifications to the Customer Due Diligence rule. In addition to advising on federal law, we are active in terms of state AML laws. In the lead-up to the New York Department of Financial Services' implementation of its Part 504 certification requirements, we joined with a leading consultancy to hold a series of roundtables so that firms could address issues of mutual concern on a collaborative basis.

In the United Kingdom, Europe and Asia, we have been equally active advising on the development of local AML compliance standards. We have appeared before the Financial Action Task Force (FATF-GAFI), the United Nations with respect to the (Anti-Terrorism Measures) Ordinance and have conferred with officials of the Treasury and Financial Conduct Authority (FCA) in the United Kingdom with respect to the implementation of the Fourth Money Laundering Directive and Fund Transfer Regulation. We have also regularly conferred with the European Securities and Markets Authority and International Organization of Securities Commissions, as well as European regulators such as the AMF and the Financial Services and Markets Authority regarding responses to consultations,

participating in committees drafting international standards based on FATF and local requirements. We regularly advise on the differences in application between the Fourth Money Laundering Directive, local AML laws of different European countries and the new proposed Fifth Money Laundering Directive. In Hong Kong, we advise on the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance.

Our lawyers regularly address compliance questions in the context of correspondent payments, trade finance, money transfers, lending activities, credit and stored-value card transactions and private banking. We advise on the development of policies and procedures, risk assessments, transaction monitoring methodologies, customer identification protocols, customer due diligence, enhanced due diligence and sensitive account relationships, including those involving politically exposed persons. We advise banks, broker-dealers, investment advisors, hedge funds and other investment fund structures, credit card companies, money services businesses, and technology companies involved in payment services. We are particularly adept at guiding clients through the process of implementing global policies and procedures that address local jurisdictional differences in each country in which the client may operate.

Contending With the Unexpected

When compliance problems arise, we help clients understand the scope of the problem and develop appropriately calibrated, responsive strategies. AML compliance exposure can arise in a number of ways. Exposures can be self-discovered as a result of an internal audit or periodic review or discovered during the course of an examination. When problems arise,

institutions have an urgent need to define the scope of the problem and implement appropriately scaled remedial measures. As noted above, Mayer Brown advises on AML compliance problems that arise in the Americas, Europe and Asia; and we are adept at leveraging our global platform to advise multi-jurisdictional clients, including globally active financial services firms, on regulatory exposures that may arise in one jurisdiction as a result of a money laundering compliance gap in another.

Lawyers in Mayer Brown's Financial Services Regulatory & Enforcement, White Collar Defense & Compliance, Litigation & Dispute Resolution, and International Trade practices have extensive experience assisting clients with AML compliance challenges, particularly with respect to the conduct of internal reviews or investigations. We appreciate that no one compliance incident is the same as another, and therefore we do not assume that the same team of practitioners will respond to any compliance scenario. When confronted with an incident, we seek to organize a team of practitioners from our respective practice groups with the most directly relevant experience to efficiently address the particular problem at hand. If the situation raises primarily supervisory concerns, the team will be drawn more heavily from our Financial Services Regulatory & Enforcement group, but if the matter presents the possibility of criminal liability, we will bring white collar knowledge to the team as well. We build teams based on client need and where our most relevant experience is, not based on practice group designation.

Mayer Brown's signature strength is working with financial services companies. Because our experience is so deep in this sector of the economy, we are particularly attuned to the complexities of the business and the regulatory environments in which our clients operate. Our

clients appreciate our ability to resolve issues efficiently and effectively. We strive to calibrate our investigation plans to the potential issues at hand and to avoid unnecessary disruptions, including interviewing employees whose roles are only tangential to the situation or reviewing records such as email files that are unlikely to shed significant light on the question at hand. Email record reviews may be unavoidable, but we do not enter into a project assuming that such reviews go with the territory.

Once a problem is scoped and understood, we work with clients to design an appropriately scaled remedial response plan. Such a plan may include adopting new policies and procedures, updating risk assessments, improving account records, enhancing training protocols and, as needed, holding responsible employees accountable. Additionally, we assess whether the issue is one that should be reported to the relevant supervisor(s) and, if so, how that should be done. We appreciate that AML compliance remains a "hot-button" issue for regulators around the globe and that the sensitivities surrounding an incident may necessitate reporting to a supervisory authority; however, we also understand that not every incident must be reported. There are a wide range of incidents that can be fully and appropriately remediated by institutions without the need to make a specific disclosure to a regulator.

Confronting Criminal Prosecutions and Supervisory Settlements

We offer white collar and contentious regulatory experience in Europe, Asia and the Americas. Several practitioners bring first-hand experience of criminal prosecutions and investigations relating to money laundering and are intimately familiar with the processes and procedures on the enforcement side, including: Gina Parlovecchio, who served as the chief of the office's International Narcotics and Money Laundering Section (INMLS) for the US Attorney's Office for the Eastern District of New York (EDNY); Dan Stein, who served as chief of the criminal division for the US Attorney's Office for the Southern District of New York; and Alan Linning, who served as executive director of the enforcement team of the Hong Kong Securities and Futures Commission (SFC).

We have successfully defended banks, broker-dealers, money services businesses and casinos in proceedings where enforcement authorities have asserted that their business activities facilitated a criminal operation that included the alleged laundering of proceeds of crime through our client organizations. These cases are complex and often fact specific. We consistently strive to achieve expedient results, yet we are acutely aware of the potentially damaging run-on consequences of settlements that are based on broad and ill-defined terms.

If a monitor is imposed as part of a settlement agreement, we assist institutions to manage such relationships as productively as possible. The key to surviving a monitorship is cabining the monitor's discretion and length of tenure as part of the agreement terms and then managing the

relationship with the objective of minimizing disruption to ongoing operations and maximizing compliance advantages. We have extensive experience in assisting clients in their management of monitors as well as their organizational responses to requests made by monitors. We are particularly experienced in assuring that a monitor's attention remains focused on the issues that resulted in the settlement agreement. We are also experienced in assuring that monitor queries that implicate operations in other jurisdictions are addressed in ways that preserve privilege and conform to relevant data protection laws.

In every case—even if it appears small or isolated, and particularly if many agencies, the media or other parties have expressed interest—we consider how our defense, our client's choices and any potential resolution may have broader implications. We are familiar with complex multinational investigations, and we take into account issues of attorney-client privilege, document retention and electronic discovery, and local blocking statutes, all of which may be crucial in the event of enforcement proceedings. For example, if improperly handled, a government investigation may invite unwanted and avoidable private civil litigation. Similarly, even a victory in a private or governmental dispute may, if not prudently managed, cause reputational damage. A regulatory inquiry may spark legislative interest, or vice versa, or one government may follow in the footsteps of another. Thus, we carefully orchestrate defense strategies with an eye toward not only winning the immediate dispute, but also minimizing spill-over into other arenas.

We pride ourselves on finding opportunities for our clients to turn a negative, such as a threat to their bottom line or reputation, into a positive, such as a chance to enhance their reputation through the development of innovative solutions or to streamline operations in a manner that improves compliance responsiveness while saving costs. We have helped clients—in the midst of a potentially hostile regulatory inquiry—to use the occasion to showcase their strong compliance culture, thereby enhancing their reputation with their regulator. Additionally, we have helped clients resolve private civil litigation on terms that compared favorably to resolutions their peers achieved when measured in monetary terms, but moreover positioned our clients to avoid adverse legislation aimed at others in their industry.

Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world's leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world's three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our “one-firm” culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

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