



# Contentious Financial Services Webinar

Key developments in financial crime

19 May 2021

ashurst

# Agenda

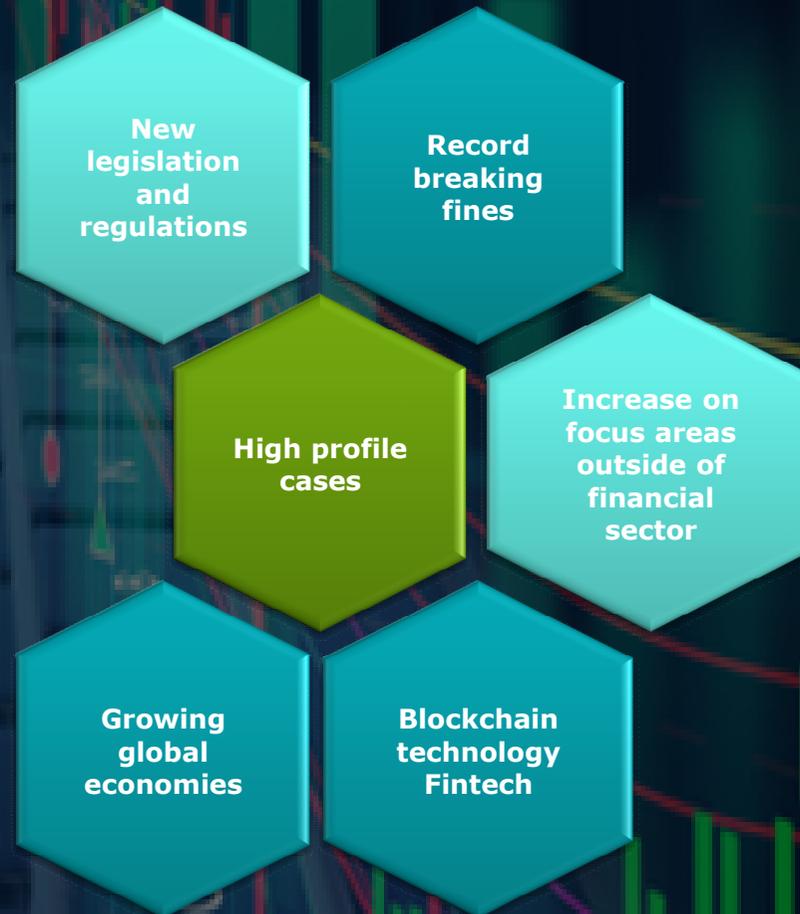
- Anti-money laundering
  - The sharp increase in global AML enforcement - how should financial institutions respond?
- Anti-bribery and corruption
  - What does the recently published guidance tell us about France's approach to the prosecution of bribery and corruption?
  - Key cases and trends: a global round up for financial institutions
- Sanctions
  - The new UK sanctions regime, how it is different and its impact for financial institutions globally
  - Update on sanctions in Myanmar, Russia and China
  - Does the UK have new thinking on monetary penalties?

# Anti-money laundering



ashurst

# Increasing Global AML Enforcement



# AML – Global Updates

## US – Individual arrested and charged with operating darknet cryptocurrency “mixer”

A dual Russian-Swedish national was arrested on 27 April at Los Angeles International Airport in relation to his alleged operation of the darknet cryptocurrency "Mixer", Bitcoin Fog.

## UK Regulator focussed on financial crime

A key theme emerging from decisions of the FCA is their focus on the risk of financial crime.

Examples:

1. Standard Chartered (2019)
2. Commerzbank (2020)
3. Sapien Capital Ltd (2021)

## UK - First penalty issued for cum-ex trading

The FCA issued its first penalty in relation to cum-ex trading dividend arbitrage and withholding tax reclaim schemes against Sapien Capital Ltd.

## UK – FCA’s new policy statement

The FCA published a new policy statement in March 2021 that added crypto companies to the list of businesses that are required to submit financial crime reports.

## Increased AML focus in Asia

1. Growing economies
2. New technologies
3. Increased recognition by regulators
4. New legislation
5. Covid-19



# Anti-bribery and corruption

ashurst

# Global Trends

## Trends in foreign bribery enforcement

- 2020 Global Enforcement Report published by TRACE (March 2021)
- Slight increase in the number of open investigations outside of US into bribery of domestic officials by foreign companies
- US had fewer enforcement actions last year but still more than elsewhere
- Increase in enforcement expected throughout the year

## Impact of CV-19

- On financial crime more broadly, and fraud-related offences specifically
- Global economic downturn creates environment "ripe for corruption"

## Biggest FCPA enforcement year on record

- OECD commended US enforcers for their efforts in combatting foreign bribery over the past decade
- Resolutions amounting to almost US\$6 billion in 2020

# Update on recent headline cases: Global

## Airbus – Global Investigation

31 January 2020 French-headquartered airplane manufacturer Airbus reached a multi-billion-dollar coordinated resolution with authorities in France, the UK, and the US due to improper payments to government officials in more than a dozen countries between at least 2008 and 2015, as well as export controls-related charges in the United States.

### Themes

- Deferred Prosecution Agreement
- Global cooperation between enforcement authorities
- Combined penalties of more than US\$3.9 billion

## Unaoil – Global investigation

In the UK, two Unaoil executives found guilty of making corrupt payments to secure contracts in Iraq; both executives have been sentenced to prison. Further guilty pleas by former officer of Petrofac announced in February 2021. Impact on Petrofac is notable. Part of global investigation.

### Themes

- Complex investigation spiralling outwards from activities of well-used agent in O&G industry
- Combination of guilty pleas and convictions
- Global cooperation between enforcement authorities
- O&G sector focus

## SBM Offshore

A former sales manager of a Dutch energy services company, SBM Offshore, was sentenced in the UK after being convicted of bribing public officials to win oil contracts in post-occupation Iraq. SBM Offshore was fined \$238 million by the U.S. DOJ in 2017 under a deferred prosecution agreement.

### Themes

- O&G sector focus
- UK enforcement of overseas activity
- Deferred Prosecution Agreement
- Global cooperation between enforcement authorities

# The French Anti-Corruption Agency Guidelines

- January 2021: The AFA updated its guidelines on Sapin II anti-corruption which first came into force on 22 December 2017
- To become effective from 1 July 2021
- Key changes to note:
  - The presumption of compliance;
  - Offences covered – corruption and influence-peddling; and
  - The three inseparable pillars:
    1. The commitment of the senior management
    2. Central role of the anti-corruption risk mapping
    3. Management of the identified risks by means of effective measures and procedures
- Extra-territorial reach

# Sanctions

# UK: The Global Anti-Corruption Sanctions Regulations 2021

- The Global Anti-Corruption Sanctions Regulations 2021 (SI 2021/488) came into force on 26 April 2021
- The new Regulations replace the Misappropriation (Sanctions) (EU Exit) Regulations 2020
- Authorises asset freezes and travel bans
- Targeted approach
- First sanctions issued against 22 individuals involved in cases of corruption in South Africa, Latin America, South Sudan and Russia
- Closer alignment to the US?

# Sanctions: Global Updates

## EU imposes sanctions over violations of human rights

On 7 December 2020 the Council of the European Union established the EU's Global Human Rights Sanctions Regime.

Under the EU Global Human Rights Sanctions Regime, the European Council have imposed sanctions for the following:

- Large scale unlawful detentions in China;
- Extrajudicial killings and enforced disappearances in Libya;
- Torturing of LGBTI persons in Russia;
- Torture and killings in South Sudan and Eritrea; and
- Repression in the Democratic People's Republic of Korea.

As a result of the EU sanctions placed on China, , ratification of the EU-China Comprehensive Agreement on Investment has been suspended (6 May 2021).

## New Myanmar Sanctions Regulations

- The UK have published new country specific sanctions regulations for Myanmar – The Myanmar (Sanctions) Regulations 2021 (SI 2021/496) to replace The Burma (Sanctions) (EU Exit) Regulations 2019.
- The regulation has expanded the category of those who fall within the designation criteria.

## Flexibility and agility for the EU

Shift from an exclusive country-based approach to the introduction of a theme-based sanctions regime providing more flexibility in the ability of EU member states to react to geopolitical developments.

## Russia – next update

[The EU has renewed the sanctions in place on Russia for 6 months up until 15 September 2021 targeting people and entities that continue to undermine or threaten the territorial integrity, sovereignty and independence of the Ukraine.

## OFSI updated guidance on monetary penalties

The OFSI's new guidance on monetary penalties came into force on 1 April 2021.

The new guidelines are set to take a harsher stance against businesses that breach sanctions imposed by the UK Government.

The guidelines include updates to:

- Legal professional privilege;
- Voluntary disclosures; and
- Case assessment.

# Key contacts



**Ruby Hamid**  
Partner

+44 20 7859 3922  
ruby.hamid@ashurst.com



**Olivier Dorgans**  
Partner

+33 1 53 53 54 25  
olivier.dorgans@ashurst.com



**Ross Denton**  
Senior Consultant

+44 (0)20 7859 3065  
ross.denton@ashurst.com

These materials are for training purposes only and are not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Please take legal advice before applying anything contained in these materials to specific issues or transactions. For more information please contact the presenters or your usual contact.