

## Conference Paper

# Legal aspects of organizing AML/CFT system in foreign companies

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### Abstract

The article explores Russian and international experience of AML / CFT regulation in companies. It analyzes the regulatory framework of the United Kingdom, France, the United States, Japan, Italy and other countries, identifies the characteristic features of counteracting the legalization of proceeds from crime. The study of analytical reports of the leading global consulting companies for 2014-2016 shows changes in the applied AML/CFT enforcement measures in the organizations: it emphasizes the quality of data of control measures for transactions, focuses on the formation of a systematic approach to AML/CFT, specifies the KYC requirements. The comparison of established international and national requirements allows to assess the level of AML / CFT provision in Russia and propose innovations in the regulatory framework for AML / CFT regulation of Russian companies to improve its effectiveness: changing penalties, increasing the effectiveness of law-enforcement authorities cooperation, implementing the principle "know your customer", ensuring the regular training of all staff, and other methods.

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**Keywords:** AML/CFT, legal framework, FATF.

## 1. Introduction

For anti-money laundering, the majority of countries organize specialized national system, which includes financial monitoring. That said, international standards in AML/CFT implemented by UN, FATF, EU, Wolfsberg group, Basel committee have the major influence on the institutional and legal structure. They are the source of legal framework for national systems leading to similarities in financial monitoring systems in different countries. And legal requirements in turn are the source of AML/CFT framework for commercial companies.

**Materials and methods:** The abbreviation AML/CFT stands for Anti-Money Laundering and Combating the Financing of Terrorism. It is now understood as an established

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international system for Anti-Money Laundering and Combating the Financing of Terrorism, which includes financial intelligence, a system of supervisory and law enforcement authorities, intergovernmental structures and organizations. Much prominence in AMF/CFT is given to collecting data about suspicious transactions and clients by the Internal Control Service in banks, insurance companies, securities market participants and other companies, which are accountable.

According to the classification suggested by V. Melnikov and A. Movesian [1], all countries can be divided by the level of AML/CFT into the following groups:

- developed countries with low specific weight of informal economy, for example the USA;
- developed countries with high specific weight of informal economy (Italy);
- developing countries which have a small share of corruption and shadow economy;
- highly corrupted developing countries with shadow economy exceeding 25-30% of GDP;
- economies in transition;
- offshore jurisdictions where suspicious transactions aimed at tax optimization are important in generating budgetary revenues.

Financial monitoring in developing countries can be described by low quality of legal regulation of relations in the field of AMF/CFT; lack of financial institutions; weak governmental coercive measures (administrative and criminal penalties). The main goal in the field of AML/CFT is to achieve an effective legal base for financial monitoring. Meanwhile, in developed countries the main goal is to improve the legislation that is already implemented in order to withstand new threats emerging from international crime. However, reasons of anti-money laundering and combating the financing of terrorism for all types of economic systems are the same: corruption in state organizations; lack of control over the use of offshore jurisdictions by companies, and making payments that provide anonymity or make difficulties in identifying the participant in the operation; applying the system of international transfers of financial resources; imperfection of financial and economic mechanisms activity that creates the possibility of illegal withdrawal of funds; significant amount of cash in the company's turnover.

The framework for implementing AML/CFT in a business entity is the functional component of the national system of financial monitoring (presented in Table 1).

Regarding identification of beneficiaries (section 2 of Table 1), the first approach seems to be more promising and effective. It insures transparency of national economy

TABLE 1: Functional component of the national system of financial monitoring.

Nº sec.	Legal procedure	Approaches to realization	Examples	Legal framework
1	Client identification	1. Identification of individuals and legal entities that perform an operation concerning a certain kind of asset or worth a certain sum; 2. Identification of clients that perform any operation.	1. EU: if the sum of a transaction in cash exceeds 15 thousand euro; Japan: for a deposit of more than 2 million yen; 2. Russia, CIS, South Africa, Germany.	EU: [2] Japan: [3]
2	Identification of beneficiaries, including the major ones	1. Business equities are obliged to provide information about the main stakeholders (beneficiaries); 2. There are no legal obligations to provide such information.	1. Great Britain, Germany, Italy, The Netherlands; 2. Russia, France, Brazil.	Great Britain [4] Germany [5] Italy [6] The Netherlands [7]
3	Monitoring of transactions, providing information to a financial monitoring unit	1. Providing information on the condition of a reasonable suspicion that the transaction is part of money laundering or financing terrorism; 2. Providing information on a set list of transactions and because of a reasonable suspicion that the transaction is part of money laundering or financing terrorism.	1. Brazil - international transfers of more than 5 thousand real, Mexico - transfers of more than 20 thousand USD, Japan - international transfers of more than 30 million yen, USA - transactions of more than 10 thousand USD made in cash and of more than 3 thousand USD in financial instruments; 2. Russia - transactions of more than 3 thousand USD in cash; also CIS countries.	Brazil, USA [5]
4	Suspension of transactions connected with money laundering and financing terrorism	1. Transactions connected with financing terrorism; 2. Transactions connected with financing terrorism or money laundering activity	All UN participants according to International regulations imposed by UN (USA, Great Britain, EU, Russia, Brazil, etc.); 2. GB, USA, Finland.	Finland [8]
5	Informational interaction of financial authorities and institutions	1. Two-stage interaction (between a client and a financial institution, and between the financial institution and a financial monitoring unit); 2. Three-stage interaction (two stages mentioned above and interaction between a financial monitoring unit and financial authorities).	1. GB, Austria, Germany; 2. Russia, CIS countries.	GB [4, 5] Germany [5]

and ownership structure. Cash-flow monitoring (section 3) is important due to the fact that in developed countries most part of current payments is non-cash. Circulation of large sums of cash lead to suspicion in its illegal origin. Besides, as for the first

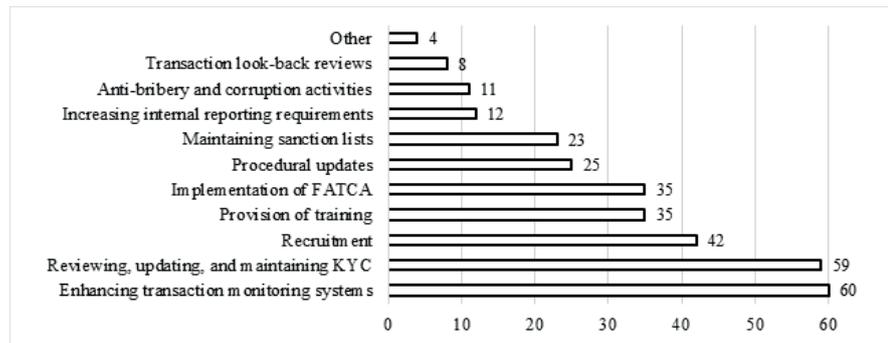


Figure 1: Expenses on activities in the field of AML/CFT, % of companies [9].

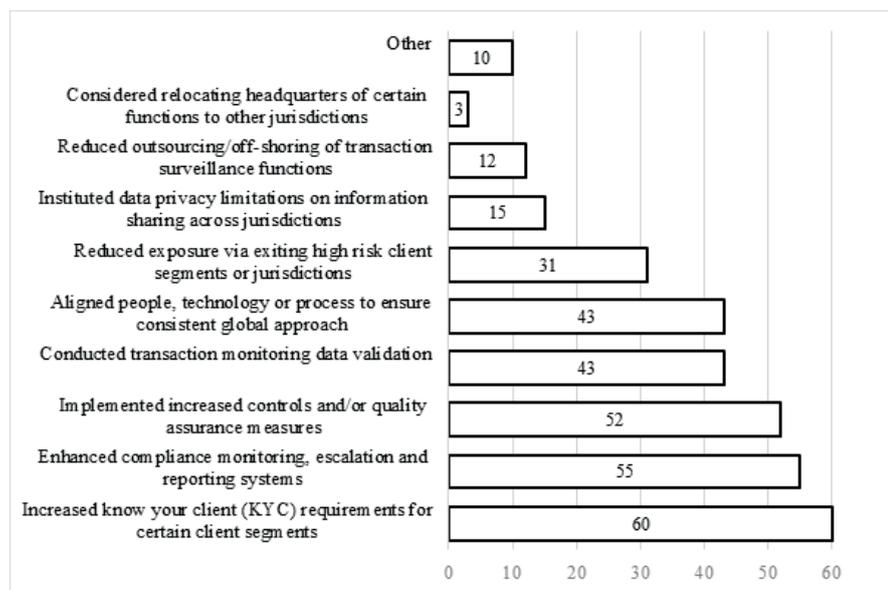


Figure 2: Measures to reduce AML/CFT risks, % of companies [10].

approach to providing information to a financial monitoring unit, the result is more or less informative workload for financial monitoring units.

Compliance of the internal AML / CFT system with the legislative requirements is achieved through the implementation of certain procedures. The international study of KPMG in 2014, results of which are reflected in Figure 1, shows that the most common and costly measures are providing KYC and improving the system of transaction monitoring (Fig 1).

By 2016, as shown in Figure 2, only additional measures of monitoring transactions had been implemented, emphasis is put on the quality of data (in 52% and 43% of companies, respectively), and attention is already focused on the development of a systematic approach to AML / CFT. For customers, 31% of companies prefer to avoid it in case of high risk, while the requirements KYC for other segments are detailed (60%).

Recommendations and conclusion: Analysis of international and Russian experience confirm the need in development of the AML / CFT regulation in organizations, because the position of Russia in this direction is far from that of the leading countries. In modern conditions, implementation of compliance and internal control procedures in the AML/CFT is not often profitable for companies, and there are no recommendations and regulatory standards for some market segments at all.

Thus, the effectiveness of the AML / CFT system can be ensured by increasing penalties for not informing the authorized state organization or inaction of institutions, which resulted the possibility of legalization of illegal funds, or criminal liability for up to five years, as in the UK.

In addition, it is advisable to consider the experience of the UK in ensuring the effectiveness of cooperation of law-enforcement authorities, where there is a database that includes information about suspicious transactions; the police has access to the base, too. The similar system exists in the US: they develop a special software that allows obtaining data from government and commercial bases and making a comprehensive survey. The office for the suppression of major financial crime of the USA has their own financial database, which includes personal data and information on court cases. At the same time, before the implementation of this system it is crucial to ensure their security and safety from external interference and safety of collectable data.

In this respect, the example of Germany and France shows a possibility of amending the legislative framework with compulsory identification of clients and beneficiaries, mandatory data storage for a long period of time, realization of KYC, continuous staff training.

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