

UPDATE

The five As - Key attributes of an effective (A)MLCO

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This article considers the role of the (Anti) Money Laundering Compliance Officer (the **MLCO**, or alternatively the **AMLCO**) appointed by an offshore supervised person¹, and provides some views on the common attributes they should possess in order to discharge their function effectively in the eyes of the regulator.

The effective MLCO

Background

In recent times, the regulatory landscape has undergone a transformative shift from mere 'tick-box' compliance to an emphasis on demonstrating *effectiveness* in the fight against financial crime.

This paradigm shift is being driven by the standards set by the Financial Action Task Force (**FATF**), compliance with which is assessed by bodies such as the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (**MoneyVal**). Regulators and supervised persons (**SPs**) alike are seeing stark changes in the way that their jurisdictions are being assessed, and the evidentiary standards they are expected to meet.

The role of the MLCO has become increasingly critical in demonstrating effective compliance within SPs. As regulators now demand tangible evidence of the effectiveness of anti-money laundering (**AML**), counter-terrorist financing (**CFT**), and counter-proliferation financing (**CPF**) measures, MLCOs are seen as key enablers in implementing and overseeing the application of these measures.

The MLCO position holds strategic importance, and in some jurisdictions even an element of personal liability, with the expectation that the postholder will ensure an SP's adherence to regulatory standards and associated guidelines set forth by the FATF. These responsibilities are not merely procedural requirements but rather essential components to providing evidence of the SP's ability to prevent, detect, and combat financial crime effectively.

Key attributes of an effective MLCO

The role of the MLCO is to oversee and ensure that an SP adheres to AML, CFT, and CPF legislation and regulations. This involves developing and implementing compliance policies and procedures, including those relating to the conducting of Financial Crime risk assessments and the monitoring of transactions, and cultivating a strong culture of compliance at every level within an SP's business.

The MLCO also supports the Money Laundering Reporting Officer (**MLRO**) by establishing internal reporting procedures and educating staff on suspicious activity reporting (**SARs**), and reports to the Board on the effectiveness of AML/CFT/CPF programs and any significant compliance issues.

¹ Financial Institutions (**FIs**), Designated Non-Financial Businesses and Professions (**DNFBPs**) and Virtual Asset Service Providers (**VASPs**) supervised by a financial services regulator and subject to the local AML/CFT/CPF regime.

To effectively carry out these functions, the MLCO should possess a distinct set of attributes, each playing a significant role in shaping their ability to ensure that the SP can prevent, detect, and report financial crime.

These attributes not only encompass the technical skills and knowledge the MLCO requires for the role, but also the level of influence, authority, and autonomy they must possess in order to work effectively. These combined attributes empower effective MLCOs to build and maintain strong compliance frameworks. Moreover, they equip the MLCO to effectively navigate the unique workplace environment and culture of the SP itself.

We have identified five fundamental attributes which are explored in more detail below, those being a clear and well-defined **aim**, a suitable level of **ability**, a comprehensive level of **access**, a credible position of **authority**, and an appropriate degree of **autonomy**.

An SP which is able to evidence that their MLCO possesses each of these key attributes will position itself favourably in the eyes of their local regulator and be well placed to prevent, detect, and report on financial crime.

Aim

An effective MLCO has a comprehensive job description which clearly articulates the aim and purpose of the role, and outlines the MLCO's key responsibilities and obligations. It is best practice to periodically refresh this job description, to ensure that it captures all of the role's mandatory requirements under local law and regulations, and remains relevant, especially in the constantly evolving regulatory climate.

Where, as a result of its business model or structure an SP is unable to maintain a dedicated MLCO function, the role and its associated obligations should be allocated to one named individual to ensure a clear allocation of responsibility. Where the MLCO holds multiple and potentially conflicting roles, these should be recorded on the SP's conflicts of interests register, as should the manner in which the conflicts are appropriately managed. Conflicts of interest and their management should also be considered within the SP's business risk assessment (BRA).

Ability

An effective MLCO is a suitably qualified and experienced compliance professional. They should be fully aware of both the SP's, and their own personal, obligations under AML/CFT/CPF laws and regulations. They should keep abreast of the latest regulatory updates and undertake regular and relevant training, which is bespoke to their role, ensuring that they satisfy, where required, any specific regulatory requirements in respect of Continuing Professional Development (CPD).

In addition, if an MLCO is a member of a professional body, they may be subject to additional annual CPD requirements to satisfy the conditions of their membership.

An effective MLCO is provided with the time and the resources, by the SP, to fulfil their role effectively. Where the MLCO holds multiple roles within the SP, they should avoid taking on an excessive number of additional responsibilities to ensure that their workload is manageable. They should also be able to leverage additional resources from across the organisation on an as needed basis. This includes people, which may include a deputy where appropriate given the size of the SP, and information technology systems.

An effective MLCO embraces and champions new technologies, such as process automation and horizon scanning, to both increase their work efficiency and to keep up to date with the latest regulatory developments.

Access

An effective MLCO has sufficient access to the Board and other relevant committees at all times, and is able to raise their concerns with them directly. It is best practice for an MLCO to personally attend Board meetings to present their reports, where they should receive an appropriate level of consideration and challenge. To evidence this, MLCO reports should be a distinct agenda item with discussions clearly noted in the Board minutes.

The MLCO should also have unfettered access to the information they need to perform their role and they must have access to relevant records including customer due diligence (CDD). The MLCO should also receive management information pertinent to their role and reports from relevant committees and Boards.

Authority

In order to gain access to the necessary information, resources, and technology to fulfil their obligations, an MLCO should have an appropriate level of authority and seniority within the organisation to be able to acquire these without undue delay or bureaucracy.

Depending on the structure of SP, this can be evidenced by placing the MLCO position at a relatively high 'grade' or equivalent which reflects their seniority within the firm.

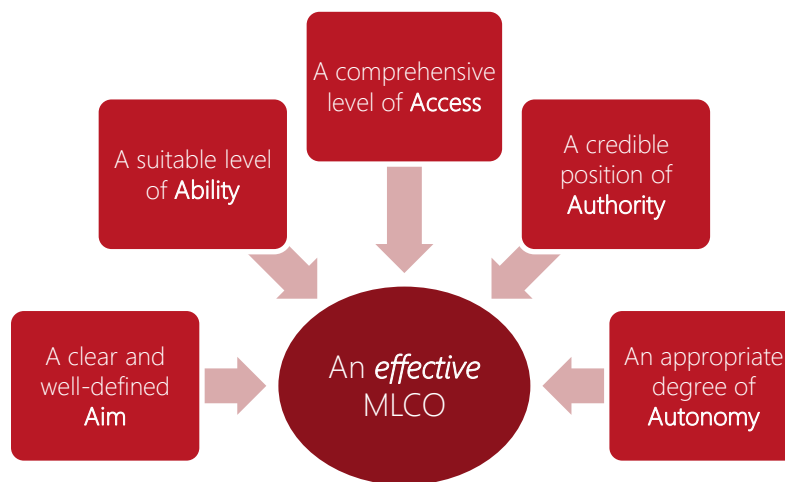
An effective MLCO also has the requisite stature and respect to enable them to monitor compliance with the SP's AML/CFT/CPF training programme, and the ability to follow-up with employees – at every level – to ensure that training is being completed on time and to a suitable standard, and the content is fully understood and being applied in practice.

Autonomy

An effective MLCO is able to operate largely autonomously and with an appropriate degree of independence. They should be free of any undue influence or pressure from the commercial side of the SP, particularly from staff in customer facing and business development roles. Though historically seen as a barrier to generating new business, to be effective the MLCO must be able to freely share their concerns with the Board and the Board must be able to evidence that they have considered and acted on these concerns.

An MLCO who is frequently overruled, or seen to be merely a 'rubber stamp' who does not present appropriate challenge, is unlikely to attract any degree of confidence from the regulator, and evidence of this is very likely to result in the regulator placing an increased focus on the SP's compliance culture as a whole.

The Five As



The ineffective MLCO

Key risks

An ineffective MLCO exposes the SP to a multitude of risks, both from a regulatory and legal perspective, and from a commercial and reputational standpoint.

In order to be effective, the key attributes described must co-exist together, as the absence of one can affect the effectiveness of the others.

For example, a highly qualified and experienced MLCO will still be ineffective if they are unable to freely access the Board, or the information they need, to highlight concerns and monitor the SP's compliance with AML/CFT/CPF laws and regulations.

Another common challenge for the MLCO, and a particular area of focus for regulators, is time and resources, particularly where the MLCO holds other positions within the business. An MLCO who otherwise possesses all of the key attributes will still be deemed ineffective by the regulator if they are unable to evidence that they have enough time and resources to perform the role effectively.

The table below describes the likely outcomes where an MLCO lacks the necessary attributes to perform their role effectively:

A MLCO who does not have...	
<p>...a clear and well-defined aim:</p>	<ul style="list-style-type: none"> • May cause confusion within the SP over their authority and responsibilities, leading to potential conflicts, overlap, and duplication of efforts; • May become overwhelmed without clear direction, leading to an unfocused approach to preventing, detecting, and reporting financial crime; • May struggle to accurately assess and prioritise financial crime risks, leading to a misallocation of resources and focus; • May miss opportunities to innovate and leverage technology to enhance compliance monitoring within the SP; • Will make it challenging for the Board to establish and monitor key performance indicators (KPIs) to assess the MLCO's performance; and, • Will hinder the MLCO's professional development and their ability to contribute effectively to the SP's compliance with its obligations.
<p>...a suitable level of ability:</p>	<ul style="list-style-type: none"> • May lose the confidence of colleagues and subordinates, which could affect their willingness to bring important compliance matters to their attention; • May struggle to lead and coach colleagues and subordinates, hindering their development and succession planning; • Will be unable to effectively implement, monitor, or test the compliance framework at the SP; • May become the bottleneck in an otherwise effective compliance team, leading to backlogs in testing and delays; • May fail to update policies and procedures in response to regulatory and legal changes; • Will lack credibility in the eyes of the regulator, leading to increased scrutiny of the SP and a more difficult regulatory relationship; • Will be more likely to commit inadvertent regulatory breaches and/or criminal offences, exposing both themselves and the SP to regulatory sanctions and criminal penalties; and, • Will be unable to provide the Board with sufficient visibility over the SP's level of compliance with AML/CFT/CPF laws and regulation.
<p>...a comprehensive level of access:</p>	<ul style="list-style-type: none"> • Will lack the information they need to raise concerns, allocate resources, and drive critical decisions; • May not have access to data which would allow them to spot emerging issues, trends, backlogs, and breaches; • May unknowingly produce work which is duplicative, overlaps with other departments, or gives rise to conflicts; • May not have access to systems and resources to properly test automated controls, systems, and data integrity; • Will struggle to coordinate and respond timeously to information requests from the regulator and other relevant authorities;

	<ul style="list-style-type: none"> • May be unable to attend or contribute to relevant sub-Boards and committees, decreasing the effectiveness of these meetings; and, • Will not be able to effectively inform and influence the Board on compliance matters.
...a credible position of authority:	<ul style="list-style-type: none"> • May struggle to cultivate a healthy compliance culture at Board level; • Will struggle to monitor and enforce mandatory employee training, leaving staff ill-equipped to identify and address financial crime risks; • Will struggle to enforce AML/CFT/CPF policies and procedures within the SP, increasing the risk of regulatory breaches by staff; • Will struggle to obtain sufficient input and support on a robust BRA discussion and challenge at board and senior management level; and, • Will find it difficult to request and allocate sufficient resources for themselves and their subordinates to work effectively.
...an appropriate degree of autonomy:	<ul style="list-style-type: none"> • Will struggle to maintain an open and transparent relationship with the regulator and other relevant authorities; • Will not be able to react quickly to urgent compliance matters, or obtain and allocate ad-hoc resources as needed; • Will be beholden to senior management and the Board to oversee compliance staffing and resources, which may be limited if compliance culture at the firm is weak; and, • May be overruled by dominant Board members leading to a decreased focus on compliance concerns and heightened risk when taking on new business.

Potential consequences

Having an ineffective MLCO can lead to serious consequences for both the SP and, in certain jurisdictions such as Jersey, Guernsey, and the Cayman Islands, the individual occupying the role itself.

At an individual level, experience shows that MLCOs are often held to particularly high standards in respect of AML/CFT/CPF by regulators in offshore jurisdictions. There is an inherent desire to safeguard the reputation of the jurisdiction and mitigate against the negative perceptions held internationally about International Finance Centres.

Individual prosecutions remain rare, but are not unheard of². It follows that SPs and MLCOs alike can expect little in the way of leniency should they find themselves facing enforcement action or the Courts.³

Conclusion

As the regulatory landscape continues to evolve, the role of the MLCO in demonstrating effective compliance has become paramount. By embracing the shift towards evidencing effectiveness, SPs can better position themselves to meet the demands of the regulator and avoid costly fines, regulatory sanctions, and punitive measures that could significantly impact their financial stability and reputation.

By providing an MLCO with the necessary resources and developing their key attributes, an SP not only enhances its ability to prevent and detect financial crime – it can also realise significant cost savings and reduced risk from a commercial and reputational perspective.

² See the criminal proceedings brought against Ms Michelle Jardine and STM Fiduciaire for offences under the Proceeds of Crime (Jersey) Law 1999, and Mr Michael Still and Investec Bank for offences under the Disclosure (Bailiwick of Guernsey) Law 2007. Both cases resulted in acquittals, but the former still resulted in separate regulatory sanctions.

³ See *AG v Abu Dhabi Commercial Bank PJSC Jersey Branch* [2020] JRC059. The Court imposed a fine of £475,000 for failure to maintain policies and procedures to prevent and detect AML/CFT/CPF, noting that the fine 'reflects appropriately the seriousness of the offending and gives the appropriate signal to the financial services industry of the seriousness with which the Court approaches matters of this nature.'

Contacts

Mourant Consulting regularly supports SPs and MLCOs in Jersey, Guernsey, and Cayman in meeting their legal and regulatory obligations. We have seen a growing trend of SPs undertaking MLCO effectiveness reviews and our expert team, consisting of former regulators and consulting professionals, specialises in conducting these assessments.

We can also provide independent assurance of your compliance framework, including key documentation such as the Compliance Monitoring Plan (CMP), mapping against the BRA and regulatory requirements, and provide tailored ongoing support as required.



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