

Annual Compliance Forum 2026

Strengthening AML/CFT
Frameworks in a Rapidly
Evolving Risk Environment

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In light of the **increasing complexity of financial crime and the rapidly evolving risk environment and Technology Innovation**, financial institutions worldwide face heightened obligations to implement robust anti-money laundering (AML) and countering the financing of terrorism (CFT) programs.

This legal brief analyzes the proposed regulatory reforms in the United States under the AML Act of 2020, including **FinCEN's updated guidance**, and highlights parallel developments under the EU Sixth Anti-Money Laundering Directive (AMLD6). It provides an integrated overview of global AML/CFT compliance obligations for financial institutions.

FinCEN Proposed Rule: Strengthening AML/CFT Programs

The Financial Crimes Enforcement Network (FinCEN) has proposed a rule to **strengthen** and **modernize** AML/CFT programs. The rule requires that programs be:

- **Effective**
- **Risk-based**
- **Reasonably designed**

Key Obligations

1. **Program Requirements:** Institutions must establish, **implement, and maintain AML/CFT programs, including a mandatory risk assessment process.**
2. **Government Priority Alignment:** Institutions must review and incorporate government-wide AML/CFT priorities into their risk-based programs.
3. **Technical Consistency:** The rule promotes clarity and consistency across FinCEN's program rules for different types of financial institutions.

The rule emphasizes avoiding one-size-fits-all approaches to customer risk, mitigating financial exclusion. This aligns with the Treasury's De-risking Strategy, **advocating for reasonably designed programs** supervised according to risk principles.

Additionally, **institutions are encouraged to modernize AML/CFT frameworks responsibly, fostering innovation while maintaining controls against illicit finance risks.**

Before 1 July 2026



1.1
Customise the *risk assessment*

- Review services and clients
- Review risk factors
- Risk rate countries you deal with

1.2
Update *personnel policy and processes*

- Assign AML/CTF roles to staff
- Ensure suitability
- Plan initial training

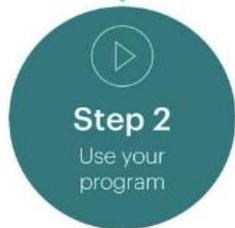
1.3
Update *client policy and process*

- Review client sections
- Update client forms

1.4
Document and approve

- Senior manager approves customised documents
- Incorporate into your systems
- Train staff

From 1 July 2026



2.1
Manage personnel in AML/CTF roles

Ensure people in AML/CTF roles have the right expertise, training and integrity:

- Before they start
- While they perform the role
- When issues occur
- When roles change or end

2.2
Manage clients and reporting

Use client forms and program to:

- Determine client type
- Collect and verify information
- Use risk factors to risk rate client
- Manage risk based on rating
- Monitor for changes to risk
- Report suspicious matters and certain transactions



3.1
Review program periodically

- Test effectiveness of controls
- Annual reports to governing body
- Independent evaluations and internal reviews – every 3 years

3.2
Review and update in response to triggers

New ML/TF risk
Loop back to 1.1 and proceed through steps

- Significant changes to your services, delivery channels, clients or countries you deal with
- AUSTRAC communicates risk information
- New or emerging risks

USA AML Act (Anti-Money Laundering Act of 2020)

The AML Act of 2020, effective January 1, 2021, introduced the most significant reforms to U.S. AML legislation since the USA PATRIOT Act of 2001.

Key Features Relevant to Non-U.S. Banks

- **Extraterritorial Reach:** Certain provisions apply to foreign financial institutions.
- **Enhanced International Standards:** Aligns with global AML/CFT expectations.
- **U.S. Correspondent Bank Compliance:** **Non-U.S. banks must comply with risk-based AML programs to maintain access to the U.S. financial market.**

Critical Program Components

- Whistleblower Program
- Identification of Politically Exposed Persons (PEPs)
- AML Program Examination
- Virtual Currencies and Antiquities Oversight
- Streamlined Suspicious Activity Reporting (SARs)

Beneficial Ownership Requirements

- **Definition: A beneficial owner is any individual who:**
 - **Exercises substantial control** over an entity, or
 - **Owns/controls at least 25% of** the ownership interests
- **Registry Access:** Available to:
 - **Government authorities** for civil or criminal investigations
 - **Foreign agencies** under treaties or trusted jurisdictions
 - **Financial institutions**, with consent, to facilitate compliance with CDD Rules
- **Noncompliance Penalties: Willful failure to report or submission of false information may trigger civil or criminal liability.**

Subpoena Power/Authority Over Foreign Banks Records:

A subpoena is an order issued by a court or an official authority requiring the production of records or documents.

Under Section 6308 of the AML Act, the U.S. Department of Justice (DOJ) and the U.S. Department of the Treasury (Treasury) may subpoena foreign bank records if the bank maintains a U.S. correspondent account, including any records related to the correspondent account or any other account at the foreign bank, whether inside or outside the United States.

Records include both paper and electronic documents related to the bank's business activities, such as names, amounts, dates, and correspondence forms.

Scope and Impact:

- **Applies to federal criminal violations, civil asset forfeiture proceedings, and BSA/AML investigations.**
- **Noncompliance may result in:**
 - **Termination of correspondent banking relationships.**
 - **Civil penalties up to \$50,000 per day.**
 - **Seizure of funds in correspondent accounts to satisfy penalties.**

This provision represents the most significant amendment to the Bank Secrecy Act (BSA) and related anti-money laundering laws since 2001, enhancing U.S. authorities' ability to investigate foreign institutions previously inaccessible for document production.

EU Sixth Anti-Money Laundering Directive (AMLD6)

The AMLD6 imposes enhanced AML/CFT **compliance requirements on financial institutions in the EU:**

1. **Harmonized Definition of Money Laundering & Predicate Offences: Includes fraud, corruption, cybercrime, environmental crimes, etc.**
2. **Expanded Criminal Liability: Applies to legal persons (companies/organizations).**
3. **Stronger Penalties:** Effective, proportionate, and dissuasive sanctions, including fines and imprisonment.
4. **Enhanced Cooperation: Clearer cross-border information sharing rules among FIUs.**
5. **Improved Transparency:** Detailed beneficial ownership and account registers with strict data safeguards.
6. **Reinforced Supervision: Empowered national supervisors and EU Anti-Money Laundering Authority (AMLA).**
7. **Clarified Roles & Rights Measures: Multinational corporations must assess risk exposure under the Antiterrorism Act (ATA), integrating AML, CFT, sanctions, and anti-bribery controls into routine risk assessments**

The Antiterrorism Act

- **Risk Assessment & Mitigation:** Include emerging risks such as cyber threats, ransomware, domestic terrorism.
- **Board Oversight:** Keep senior leadership informed about compliance gaps, risk exposure, and program updates.
- **Integration of Global Standards:** Align U.S. and EU requirements with international best practices.
- **Innovation with Compliance:** Modernize programs responsibly to allow digital transformation while managing illicit finance risks.

The U.S. Anti-Terrorism Act (ATA) and JASTA

Legal Framework:

The U.S. Anti-Terrorism Act (ATA), codified at 18 U.S.C. § 2333, **provides a civil cause of action for U.S. nationals injured “by reason of an act of international terrorism.”** The Justice Against Sponsors of Terrorism Act (JASTA, 2016) **expanded the ATA to explicitly include secondary liability for aiding, abetting, or conspiring with terrorists.**

Remedies for Plaintiffs:

Successful plaintiffs under the ATA may recover:

- **Treble damages** (triple the amount of actual damages),
- **Costs, and**
- **Attorneys’ fees.**

Establishing Liability:

To hold a defendant liable, a plaintiff **must prove three elements:**

- 1-An act of international terrorism,** as defined in 18 U.S.C. § 2331,
- 2-Injury to the plaintiff’s person, property, or business, and**
- 3-Causation linking the defendant’s conduct to the injury.**

Primary Liability (Direct Liability)

Definition:

A defendant is primarily liable when it directly commits an act of international terrorism.

Elements:

- **Engages in violent or dangerous acts** intended to intimidate or coerce civilians or influence government policy,
- **Acts intentionally or with knowledge that the conduct furthers terrorist activity,** and
- **Causes proximate harm to the plaintiff.**

Key Characteristics:

- Focuses on the **defendant's own conduct, not the conduct of others,**
- Requires a **close causal connection between the act and the injury.**

Conspiracy Liability (Primary):

A defendant **may also be liable if it:**

- **Agreed with others to commit an act of international terrorism,** and
- **An overt act in furtherance of the conspiracy caused the plaintiff's injury.**

Secondary Liability (Aiding, Abetting, or Conspiracy)

Statutory Basis:

Secondary liability was expressly added to the ATA by JASTA (2016), codified at 18 U.S.C. § 2333(d).

Forms of Secondary Liability:

1-Aiding and Abetting

2-Conspiracy

Aiding and Abetting Liability:

A defendant may be liable if it:

- **Was generally aware that it was playing a role in terrorist or violent activities, and**
- **Knowingly provided substantial assistance to the principal wrongdoer.**

Substantial Assistance May Include:

- **Financial services,**
- **Logistical or operational support,**
- **Providing resources, training, or safe haven.**

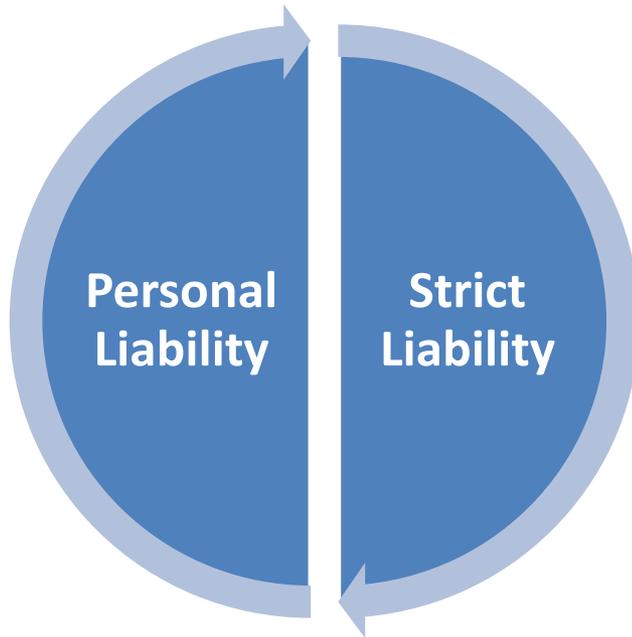
- **Factors Considered by Courts:**
- Nature of the act encouraged,
- Amount and duration of assistance,
- Defendant's state of mind,
- Relationship to the terrorist actor.

Conspiracy Liability (Secondary):

Liability may also arise if a defendant conspired with others to commit acts of terrorism that resulted in injury to the plaintiff.

Liability Standards

→ Avoid indications of Control Weakness or Systematic Failures



Knowingly & Intentionally

Weak Controls / Systematic Failures

Individual error(s)

In the end, the evolving global AML/CFT landscape **demands risk-based, effective, and reasonably designed programs**, aligned with **domestic and international frameworks**.

The proposed **FinCEN rule, AML Act of 2020, and AMLD6 emphasize transparency, accountability, and robust governance to mitigate financial crime risks, promote financial inclusion, and ensure compliance across borders**.

Financial institutions **must adopt a holistic approach, integrating beneficial ownership reporting, enhanced due diligence, and consistent risk assessment, while ensuring senior management oversight**. This strategy **safeguards financial systems and maintains operational and legal integrity in a rapidly evolving risk environment**.