

## **THE NEW MONEY LAUNDERING RULES: WHAT DO THEY MEAN FOR YOU?**

### **INTRODUCTION**

The Money Laundering Regulations 2003 came into force in full on 1 March 2004. These regulations make it mandatory for all accountants, tax advisers, lawyers and other associated professions to have an effective policy to prevent money laundering.

The Financial Services Authority ('FSA') has responsibility for enforcing the Money Laundering Regulations. Failure to comply can have serious consequences for the professional adviser as even unwitting assistance in money laundering can result in criminal sanctions including imprisonment.

This Memorandum summarises the main issues that affect professional advisers and suggests some outline procedures to assist them in getting to grips with two key areas, 'know your client' and 'due diligence'. These regulations impact the traditional adviser/client relationship, and the Memorandum is also intended to assist the professional in explaining the requirement to conduct identity checks to new and prospective clients.

### **WHAT IS MONEY LAUNDERING?**

Money laundering is generally considered to be the process of circulating the proceeds of crime through respectable channels so as to break the connection between the crime and the money which it generates. The money laundering process is designed to confuse any audit trail for the investigating authorities. Criminals use professionals such as tax advisers, solicitors, accountants and banks as respected 'fronts' through which to launder the proceeds of crime. Money laundering is an international phenomenon: the greatest volumes of 'dirty' money arise from drug trafficking and terrorism.

The Money Laundering Regulations 2003 expand the definition of money laundering to incorporate any transaction involving "criminal property", including the proceeds of fraud, tax evasion and other financial crime.

Three new offences have also been introduced:

- the concealment, disguise, transfer or removal from the jurisdiction of "*criminal property*"

- involvement in an arrangement which a person knows or suspects facilitates the acquisition, retention, use or control of “*criminal property*”
- the acquisition, use or possession of “*criminal property*”

“*Criminal property*” is defined as any benefit derived from “*criminal conduct*” where the person concerned knows or suspects that the property constitutes such a benefit. The definition of “*criminal conduct*” is very wide and includes anything which constitutes an offence in any part of the UK. For example, underpaid tax resulting from tax evasion would constitute “*criminal property*”.

### **WHO IS AFFECTED?**

The 2003 Regulations impact on all tax advisers, qualified or not, lawyers, accountants, insolvency practitioners and other associated professions regardless of whether or not a firm or individual is regulated by the FSA.

Activities which are specifically subject to the Money Laundering Regulations now include:

- buying and selling property of any kind
- buying and selling business entities
- managing client money, securities and other assets
- opening/management of bank and other accounts
- creating/operating/managing trusts and/or companies

A firm or individual advising in connection with any of the above activities is within the scope of the Money Laundering Regulations whether or not client funds are held.

**Individuals are personally liable to criminal sanctions if they are, even innocently, involved in any money laundering activities. That potential criminal liability is absolved if the individual reports any such activity or suspicion of activity to the firm's nominated Money Laundering Reporting Officer (see below).**

## **WHAT DO THE REGULATIONS MEAN FOR YOU?**

It is vital that professional firms and individuals advising in connection with the relevant activities are vigilant when accepting instructions from ANY new client, as this is the key to avoiding problems later on.

In particular advisers must ensure they:

- Know their client
- Understand what they have been instructed to do and the implications of those instructions ('due diligence')

Penalties for even unwitting assistance in connection with money laundering activities are severe and carry a maximum prison sentence of 14 years.

## **VERIFYING CLIENT IDENTITY**

Proof of identity should be obtained for all prospective new clients. If proof cannot be provided the instructions should be declined. The evidence of identity should be reasonably capable of establishing that the client is the person he claims to be. This will vary depending on the type of client. Where the client is, or appears to be, acting on behalf of a third party, the firm should obtain evidence of both their identities.

Suggested ways of establishing the identity of new clients are as follows:

For private individuals and trustees:

- Name, address and date of birth should be recorded
- ID should be confirmed by passport, national identity card (with photograph) or photocard driving licence
- Private address should be confirmed via a recent bank statement, utility bill or a search of the electoral roll

For charitable and other organisations:

- Confirm that the charity is registered with the Charities Commission
- Confirm the personal ID of the trustees or individual giving the instructions as above

- In addition, proof of the contact's authority to issue instructions may be needed

For private companies:

- Obtain a copy of the Certificate of Incorporation
- Obtain proof of identity of at least two of the officers of the company
- In the case of non- UK registered companies, evidence should also be obtained that the company has a legitimate trading activity (usually this will be a bank reference from the company's bank)

For quoted companies:

- A copy of the Certificate of Incorporation or a search of the file at Companies House may be needed
- Obtain proof of the authority of the company's representative (if not a Director) to issue instructions
- Verify the identity of that individual

## **UNDERSTANDING THE INSTRUCTIONS – DUE DILIGENCE**

It is essential that the adviser fully understands the scope of the instructions he has been given and has carefully considered the implications of these. The adviser's understanding of the instructions should be confirmed back to the client in writing at the outset to ensure there is no misunderstanding as to what the adviser has agreed to do.

It is important to make a file note of the due diligence undertaken. Appendix A contains a suggested due diligence checklist which can be adapted as necessary to suit the adviser's business. If there are grounds for suspicion these must be reported to the firm's nominated Money Laundering Reporting Officer – see below.

## **THE MONEY LAUNDERING REPORTING OFFICER (MLRO)**

All firms advising in connection with any of the activities covered by the 2003 Regulations must appoint an MLRO. The responsibilities of the MLRO are:

- to ensure the firm has satisfactory internal anti- money laundering procedures in place and that members of the firm

receive training on those procedures

- to receive internal reports of suspicious situations
- to transmit reports of suspicions to the National Criminal Intelligence Service (NCIS) after investigation, when appropriate; and
- to make an annual report to the firm's senior management, which must consider it and take any appropriate action

The following records must be maintained by the MLRO:

- A record of the action taken by the MLRO in relation to internal reports of suspicious situations; of onward external reports by the MLRO to NCIS; and of information which has led to internal reports not being passed to NCIS
- The annual report by the MLRO to the firm's management board
- Records of staff training showing the dates when anti-money laundering training was given, the nature of the training and the identity of the staff involved

## **SUSPICIOUS SITUATIONS**

Suspicious situations must be reported to the MLRO by **any** member of the firm who has reason to regard a course of action proposed by a client as suspicious. When the MLRO receives a report of suspicion from any member of staff the procedure should be as follows:

- The MLRO must remind the person making the report not to alert the client by doing anything which might amount to 'tipping-off'
- The MLRO must ensure that the report is confirmed by the staff member in writing
- The MLRO must act in such a manner as not to prejudice any investigation which may follow. The MLRO should emphasise that no one outside the firm should be informed of the report or that an investigation might be undertaken
- The MLRO should review the circumstances and decide in conjunction with the Board whether the matter should be

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referred to the National Criminal Intelligence Service (NCIS) at  
PO Box 8000, London SE11 5EN (Telephone: 020 7238 8607)

Whatever decision is taken, the reasons for the decision must be recorded in writing and included in the MLRO's annual report to the firm's management board.

When cases are referred to NCIS they have to be made on the form available from the NCIS website [www.ncis.co.uk](http://www.ncis.co.uk). The NCIS investigating officer will acknowledge the notification. Written 'consent' will then normally be given for the firm to proceed with the transaction; usually retrospectively. This consent will continue to apply unless the investigating officer informs the firm otherwise.

The 'consent' to undertake the transaction following disclosure will be provided to the firm as a defence against a charge of assisting a money launderer. It is not intended to over-ride normal commercial judgment and the firm is not committed to continuing the relationship with the client if such action would place the business of the firm at commercial risk. Before attempting to terminate a relationship in these circumstances, the firm must liaise with the NCIS investigating officer to ensure that termination does not tip-off the client or prejudice the investigation in any way.

Instructions as to the course of action to be taken will be given by the investigating officer within the notification detailed above and any subsequent correspondence. If NCIS decide that action should be taken, they forward the case to a special team of police or customs officers.

Details of suspicious circumstances must be retained for a minimum of 5 years following the date of reporting.

**BREACH OF CONFIDENTIALITY AND OTHER STATUTORY PROTECTIONS**

The Criminal Justice Act provides protection to anyone reporting a suspicion of money laundering against being sued by clients for breach of confidentiality.

No clear guidance has yet been given on the relationship between the protections contained in the Data Protection Act and the Human Rights Act, and the obligations to notify NCIS under the Money Laundering Regulations. Until a ruling is given on this matter, any decision to notify NCIS will have to be taken in the light of this situation.

## **TRAINING ON MONEY LAUNDERING PROCEDURES AND CONTROLS**

The firm must provide or arrange training in its money laundering procedures and controls to all members of staff who may be exposed to money launderers; including secretarial, administrative and accounts staff.

New members of staff must be trained in the firm's money laundering procedures and controls as part of their induction programme. Periodic refresher training must be provided.

All training relating to the firm's money laundering procedures and controls should be recorded on the individual's personal file and a central copy retained by the MLRO.

## **ANNUAL REPORT TO THE BOARD**

The MLRO must make an annual report to the firm's management board which should:

- Assess the firm's compliance with the FSA Sourcebook
- Indicate how the firm has responded to any new findings of Government or of the Financial Action Task Force in relation to money laundering
- Specify the number of reports of suspicious situations which have been made by members of the firm's staff.

## **RECORDING AND CONTROLS – SUGGESTED PROCEDURES**

Appendix B contains some suggested administrative procedures which may assist advisers in developing their own internal controls systems.

## **FOR GENERAL INFORMATION ONLY**

Please note that this Memorandum is not intended to give specific technical advice and it should not be construed as doing so. It is designed to merely alert clients to some of the issues. It is not intended to give exhaustive coverage of the topic.

Professional advice should always be sought before action is either taken or refrained from as a result of information contained herein.

## **APPENDIX A**

### **SUSPICIOUS SITUATIONS – AIDE MEMOIRE**

The following are examples of where concern should be raised and the Money Laundering Reporting Officer informed:-

#### **Client Identity**

- 1 A transaction is proposed but it transpires that the client is not the person you are actually dealing with.
- 2 In a transaction the identity of the client or company changes

#### **Payment of Fees**

- 3 A client makes a payment on account in advance of work being undertaken and the work never takes place. We are asked to return the money to the client or another third party.
- 4 A client overpays on our invoice and requests a cheque or transfer of the excess funds in our account.
- 5 Payment is made from a different source from that originally expected.
- 6 Payments made by cash.
- 7 Surprise payments by way of third party cheque.



**General**

- 8 Be cautious if the client is introduced through an overseas bank or third party based in countries that are outside Schedule 1 of the Financial Action Taskforce Publications.
- 9 We are asked to advise in connection with a transaction with no apparent commercial reason.
- 10 Be cautious if instructions change without a reasonable explanation and also be cautious about transactions which take an unusual turn.
- 11 Take care if funds are being routed in to and out of the UK without a logical explanation.
- 12 Be cautious about confusing movements of funds between different accounts, institutions or jurisdictions without apparent reason.

## **APPENDIX B**

### **CONTROL PROCEDURES**

A Proof of Identity Form should be included in each new client file opened. This will serve as a reminder to the adviser of the need to confirm client identity and also as a check list of the relevant documentation the client should provide. The Proof of Identity Form should be annotated to show when the necessary documents have been seen so will provide a file record of the action taken. A specimen Proof of Identity Form is included at the end of this Appendix.

A central record of all new client files opened should be maintained and held by the Office Manager. This should include at least the following:

- the file reference
- client name
- date of opening
- the name of the adviser responsible for the client
- and the date by when identity should be confirmed (see below)

The central record will be one of the main means of ensuring compliance with the firm's money laundering prevention policy and will be inspected by the FSA if a check visit is made.

Responsibility for confirmation of client identity will usually rest with the adviser handling the case. Client identity should be verified no later than six weeks after receiving instructions and in all cases prior to delivery of advice. Once client identity has been confirmed, the adviser should inform the Office Manager who will update the central record accordingly.

If the Office Manager has not been notified that the identity check has been completed with one month of a file being opened, the Office Manager should request a status report from the adviser with responsibility for the client. The Office Manager should refer the matter to the MLRO in writing if

- the adviser does not provide a status report within two weeks of the request

- identity has not been confirmed within six weeks of instructions being received
- in all cases of doubt

The MLRO should pursue the matter with the adviser to ensure identity checks are completed as a matter of urgency.

### **RECORDING IDENTITY AND MAINTAINING RECORDS OF IDENTITY CHECKS**

Where a document confirming identity is provided, two copies should be taken and certified as being true copies of the original. The evidence of the client's identity should be recorded on the Proof of Identity Form (see above).

One certified copy of the documents confirming identity should be placed on the client file together with the Proof of Identity Form. The second copy and a copy of the completed Proof of Identity Form should be filed in the Client Identity Check file which will be held by the MLRO.

Where reliance has been placed on evidence of identity obtained by another authorised/regulated firm or organisation (i.e. bank, solicitors or accountants), a certified copy of the evidence must be obtained together with written confirmation that this was obtained by the introducing firm. Copies of both documents should be placed on the client file and the Client Identity Check file, as above.