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Between 2002 and 2004 the government introduced tough new rules to crack down on money laundering and the proceeds of crime. Some of these rules have now been updated and extended and those affected are required to make some changes to their existing anti-money laundering policies and procedures.

The new rules are known as the Money Laundering Regulations 2007. They replace their 2003 counterpart and became effective on 15 December 2007. In this briefing we consider how the new rules may affect you and your organisation. We begin by providing some background information on the legislation in this area and go on to consider the changes that you might see, whether you are caught by the Regulations themselves, or simply make use of the services of a business that is affected.



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Money Laundering Update

The impact of the extended regulations

Money laundering - a definition

Many people imagine money launderers to be criminals involved in drug trafficking or terrorism or to be someone like Al Capone. However legislation introduced over recent years has extended significantly the definition of what most might have traditionally considered as money laundering. While the general principles remain; money laundering involves turning the proceeds of crime into apparently 'innocent' funds with no obvious link to their criminal origins, what has changed is that the definition now includes the proceeds of any criminal offence, regardless of the amount involved.

The new legislation and why it has been introduced

The Proceeds of Crime Act 2002 (The Act) and the Serious Organised Crime and Police Act 2005 both continue to contain relevant legislation in this area, as do the Terrorism Acts. The new legislation takes the form of the Money Laundering Regulations 2007 (The Regulations). The Regulations contain the detailed procedural requirements for those affected and they replace the Money Laundering Regulations 2003. The new Regulations came into force on 15 December 2007.

The new legislation stems from the European Union's Third Money Laundering Directive and the Regulations are the mechanism used by the government to implement the requirements of this Directive.

Who is caught by the Regulations?

The Regulations apply to anyone who is defined as a 'relevant person', which in general terms includes:

- auditors and external accountants
- tax advisers
- independent legal professionals
- dealers in high value goods (including auctioneers) whenever a transaction involves accepting payment of at least €15,000 (or the equivalent in any currency; around £10,000) in cash for goods, whether in a single transaction or in several instalments
- trust or company service providers
- insolvency practitioners
- estate agents
- casinos
- credit and financial institutions.

The implications of being a 'relevant person'

Those businesses that fall within the definition are required to establish procedures to:

- **perform 'customer due diligence' (CDD)**
This includes verifying the identity of their customers or clients. Identifying, where there is a 'beneficial owner' (see over) who is not the customer and at times verifying their identity. In addition information on the purpose and the intended nature of the business relationship must be obtained.
- **maintain records**
These include copies of the identity evidence obtained as part of CDD. It is also necessary to maintain supporting records in respect of the business relationship.
- **maintain a number of appropriate risk-based policies and procedures**
These must cover amongst others, CDD and ongoing monitoring, reporting, record keeping, internal control and risk assessment and management. Also, the monitoring and management of compliance with, and the internal communication of, these policies and procedures in order to prevent activities related to money laundering and terrorist financing.

In most cases, the appointment of a money laundering reporting officer (MLRO) to receive reports of money laundering must also be made.
- **ensure that relevant individuals within the business are aware of the law relating to money laundering and terrorist financing** and that they are regularly given training in how to recognise and deal with transactions and other activities which may be related to money laundering.

If your business is a 'relevant person' you may have already received guidance from your professional or trade body. Please come and talk to us if you would like to discuss in more detail how the requirements of the Regulations will affect you. Overleaf we consider how the Regulations affect those of you who are high value dealers, money service businesses, trust or company service providers and certain accountancy service providers. We also consider how you may be affected if you have dealings with a business caught by the Regulations.

Continued overleaf >>>

The implications for customers or clients

As you can see from the list overleaf, quite a wide range of professionals and other businesses are affected by the Regulations. Those affected must comply with the law in this area as they face the prospect of criminal liability, both fines and possible imprisonment, if they do not.

Procedural changes

In your dealings with any business that is affected you may notice a few procedural changes. In common with banks and other financial institutions, accountants will continue to require evidence of the identity of any new clients. In many cases this could involve seeing and taking a copy of photographic identification such as a passport or new style driving licence. For those of you in business the identity of your organisation itself must be established, perhaps by confirming records at Companies House. The law requires these identification records to be maintained for five years after a client relationship has ended.

The new Regulations also require procedures to be applied to existing clients. Even if you have been a client of an affected business for a number of years you may be asked to provide evidence of your identity. Of course, the business may already have sufficient evidence of this through their previous dealings with you. Your usual contact will no doubt be in touch if any information is required.

You may also find that additional information is required about certain background aspects of your business. This might include questions about the ultimate 'beneficial owners' of your business if you are part of a group for example. A beneficial owner is an individual who ultimately owns or controls more than 25% of the shares or voting rights in the company. At times identity evidence may also be required. In the case of a trust further information about the beneficiaries may be requested.

What has changed for those caught by the Regulations?

If your business was caught by the previous Regulations you will already have a number of relevant policies and procedures in place. To remain compliant you should revisit these and ensure that they are updated to meet the extended requirements. Key areas to consider include understanding the meaning of CDD; this being something more than simply obtaining evidence of the identity of your new clients. Procedures must now be applied to existing clients and your client portfolio will need to be risk-assessed.

You should ensure that your internal checklists are updated for the latest requirements. For example to consider whether you have met your client face to face or the client is a 'politically exposed person'. You will need to establish policies and procedures that will determine when and how you update your CDD and how you will monitor your business relationships on an ongoing basis.

Your new policies and procedures must be communicated to your team and regular training must be provided on how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing.

The role of HMRC

HM Revenue and Customs (HMRC) is a 'supervisory body' for a number of businesses caught by the Regulations. This means that HMRC must ensure that those it registers for the purposes of the Regulations are compliant with their requirements and that they have appropriate anti-money laundering controls in place.

HMRC is the supervisory authority for those who are high value dealers (HVDs) and is also the supervisory authority for:

- money service businesses (MSBs) that are not supervised by the Financial Services Authority (FSA)
- trust or company service providers (TCSPs) who are not supervised by the FSA or one of the professional bodies stipulated in the Regulations
- accountancy service providers (ASPs) who are not supervised by one of the professional bodies stipulated in the Regulations.

Specific HMRC guidance has been produced for those affected by the new Regulations which:

- outlines the legislation on anti-money laundering (AML) and combating terrorist financing (CTF)
- explains the requirements of the Regulations and how these should be applied in practice
- provides industry specific good practice guidance on AML/CTF procedures
- assists businesses in designing and putting in place the systems and controls necessary to lower the risk of their business being used by criminals to launder money or finance terrorism.

Am I affected?

If you are a high value dealer, a bureau de change, a money transmission business, a cheque encashment business, a trust or company service provider or an accountancy service provider and you are not otherwise supervised for the purposes of the Regulations then you need to be aware of HMRC's requirements.

How will my business be affected?

You are required to establish and maintain appropriate and risk-sensitive policies and procedures as set out under 'the implications of being a relevant person' overleaf.

These policies and procedures must include policies and procedures that:

- identify and scrutinise complex or unusually large transactions, unusual patterns of transactions which have no apparent economic or visible lawful purpose and any other activity which could be considered to be related to money laundering or terrorist financing
- specify the additional measures that will be taken to prevent the use of products and transactions that favour anonymity for money laundering or terrorist financing

- determine whether a customer is a 'politically exposed person'
- nominate an individual in the organisation to receive suspicious activity reports (an MLRO)
- ensure employees report suspicious activity to the MLRO
- ensure the MLRO considers such internal reports in the light of available information and determines whether they give rise to knowledge or suspicion or reasonable grounds for knowledge or suspicion of money laundering or terrorist financing.

Financial institutions, which include bureaux de change, money transmitters and cheque cashers must additionally:

- establish and maintain systems which enable a full and rapid response to enquiries from law enforcement agencies
- communicate the policies and procedures to branches and subsidiary undertakings which are located outside the UK.

Senior managers are responsible for the design and operation of these policies and procedures and a policy statement should be prepared. The HMRC document MLR 8 'Preventing money laundering and terrorist financing' provides sector specific guidance in the application of the Regulations. For example an appendix provides specific guidance for money transmission businesses and highlights the particular money laundering risks that are faced when transferring funds between the UK and overseas customers.

Registering with HMRC

New businesses must apply for registration before they can carry on their business, or in the case of HVDs, before they are prepared to accept relevant cash payments.

Those businesses that were registered under the previous Regulations must re-register with HMRC. MSBs should have applied to re-register before 1 February 2008. HVDs will be asked to complete the new MLR100 registration form at the time of their annual renewal. Existing TCSPs have until 1 April 2008 to apply to be registered and at the time of going to print it appeared that ASPs should complete an application to register before 1 July 2008. The registration fee for the year commencing June 2007 is £95 per premises.

A new 'fit and proper' test (form MLR101) has also been introduced for those who operate MSBs or TCSPs.

Finally, there are some limited exemptions from registration.

The importance of compliance

Failing to comply with the Regulations themselves is a criminal offence, which can result in a prison sentence. HMRC also has the power to impose civil penalties on businesses that fail to comply with certain requirements of the Regulations.

If you would like to discuss how the new Regulations could affect you and your organisation in more detail please contact us.