

Anti-Money Laundering - A Practical Guide

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The logo for the Anti-Money Laundering Trust (AAT), consisting of the lowercase letters 'aat' in a green, sans-serif font. The letter 't' has a horizontal bar that extends to the right, ending in a small vertical tick.



Introductions

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Agenda

- Introduction
- What is Money Laundering
- Legal requirements
 - Customer Due Diligence
 - Monitoring
 - Record Keeping
- Recordkeeping
- Reporting Requirements
- Tipping Off
- Training
- Sanctions
- Future
- Open Discussion



What is 'Money Laundering'?

To understand what the current and future requirements and responsibilities are we first have to ask the following questions

'What is Money Laundering ?'

Is this Money Laundering ?





Money Laundering is.....

- Any arrangement that involves the benefits of crime. It takes place every time a transaction or arrangement occurs which involves property (or benefit) that has derived from crime.



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International Fight against Money Laundering and Terrorist Financing



Financial Action Task Force FATF



EU

- First Directive passed in 1991
- Second Directive passed in 2001
- Third Directive passed in 2005
- Fourth Directive under discussion



EU 3rd Directive



Money Laundering Regulations 2007



UK Legislation and Regulations

- Proceeds of Crime Act 2002
 - As amended by the Serious Organised Crime and Police Act 2005 and the Serious Crime Act 2007
- Terrorism Act 2000
 - As amended by the Anti Terrorism Crime and Security Act 2001 and the Counter-Terrorism Act 2008
- Money Laundering Regulations 2007
- HM Treasury Consolidated Sanctions List
 - Terrorist Asset-Freezing etc. Act 2010



Money Laundering Supervisors



Money Laundering Supervisors

- Financial Conduct Authority
- Prudential Regulation Authority
- HM Revenue and Customs
- OFT
- Gaming Commission
- Professional Industry Bodies
- Secretary of State
- DETI in Northern Ireland



Money Laundering Regulations 2007



What institutions are covered by the Directive

- Credit institutions
- Financial institutions
- Independent legal professionals
- External Accountants, Auditors and Insolvency practitioners
- Trust or company service providers
- Estate Agents
- Tax Advisors
- Casinos
- High value dealers



High Value Dealers

- A High Value Dealer means a firm or sole trader who by way of business trades in goods (including an auctioneer dealing in goods) when he receives, in respect of any transaction, a payment or payments in cash of at least 15,000 Euros in total whether as a single transaction or several linked transactions



The Requirements

Customer due diligence measures and ongoing monitoring

Reporting

Record-keeping

Internal controls

Risk assessment and management

Monitoring and management of compliance



When to apply Customer Due Diligence Regulation 7

- When establishing a business relationship
- Carrying out an occasional transaction
- You suspect money laundering
- You have doubts about the data or information previously obtained for identification or verification



Risk based approach



Customer Due Diligence

- Is a risk assessment.
- It is now accepted that CDD is the process by which a business not only identifies its client but obtains sufficient information to be able to **ASSESS THE RISKS** that a client relationship poses to it, at the outset of the relationship. CDD overarches and includes ongoing gathering of information and assessment of activity.
- It is the key to the recognising, reporting and prevention of Money Laundering and Terrorist Financing



Risk Based Approach

- In practice you have to set your criteria on a risk basis.
- However there is one overriding thing you must always do and that is you **MUST FULLY** meet all the appropriate Laws and Regulations
- So why a Risk based approach



Why a Risk based approach ?

- Essential for targeting and proportionality
- Risk prioritisation
- Limited resources
- Relevant for both new and existing clients
- One size does not always fit all
- Risk-based approach is standard in other areas of risk e.g. Credit



Enhanced CDD and Monitoring Regulation 14

Regulation 14 requires you to undertake on a risk sensitive basis enhanced customer due diligence and enhanced ongoing monitoring in a number of given situations:



Regulation 14 cont.

1. The situation presents a higher risk of money laundering or terrorist financing
2. The customer was not physically present for identification purposes
3. When establishing a correspondent banking relationship with a non-EEA bank
4. When establishing a business relationship or carrying out an occasional transaction for a 'politically exposed person'



Politically Exposed Persons

- The definition of who is a Politically Exposed Person for these purposes is given in Section 4 of Schedule 2 of the Regulations.
- It is too long to put on a slide so I have here an handout.
- We will discuss the practical aspects later.



Timing of Verification

Regulation 9

Subject to certain exceptional circumstances listed in Regulation 9 the identity of the customer (and any beneficial owner) must be established before the establishment of any business relationship or the carrying out of an occasional transaction



Ongoing Monitoring



Ongoing Monitoring Regulation 8

- A relevant person must conduct ongoing monitoring of a business relationship
- Ongoing monitoring means:
 - Scrutiny of transactions undertaken throughout the course of the relationship
 - Keeping the documents, data or information for CDD up-to-date



Requirement to cease transactions

Regulation 11

If you are unable to apply CDD measures we must:

- Not carry out a transaction with or for your customer through a bank account
- Not establish a business relationship or carry out an occasional transaction
 - You must terminate any existing business relationship with the customer
- Consider whether to make a Suspicious Activity Report.



Record Keeping

- Identification records must be kept for 5 years following the end of the client relationship
 - How do you organise your record storage?
 - How do you know when to start the ‘5 year clock’
- Transaction records must be kept for 5 years from the date of the transaction



Reporting Suspensions

- Firms must have procedures in place under which in terms of the Proceeds of Crime Act 2002 ,the Terrorism Act 2000 and the Money Laundering Regulations 2007



Reporting Requirements

- Firms must have:
 - A Nominated Officer
 - Procedures under which employees report any knowledge or suspicion.
- We will look at these in detail when discussing the Proceeds of Crime Act.



Training and Awareness



Training

Regulation 21

- Requires measures so that all relevant employees are:
 - Made aware of the law relating to money laundering and terrorist financing
 - Regularly given training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing



Training Programme

- Training and Awareness are vital
- Without it how can you as an organisation ensure that your employees are able to meet their and your responsibilities
- Providing it is a legal requirement



Offences

- Failure to comply with any of the main Regulations we have discussed is an offence punishable by up to 2 years in prison, a fine or both.



And Remember

- Officers and Partners are equally liable as individuals if the offence is due to any connivance or negligence on their part.



Proceeds of Crime Act 2002



All Crimes

- Money Laundering legislation now includes ALL CRIMES
- There is no de minimis limit
- The 'crime' does not have to be committed in the UK



Section 327 – Concealing etc.

A person commits an offence if he-

- a) conceals criminal property
- b) disguises criminal property
- c) converts criminal property
- d) transfers criminal property
- e) Removes criminal property from England, Wales, Scotland or Northern Ireland



Section 328 - Arrangements

A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person



Section 329 – Acquisition, use and possession

A person commits an offence if he-

- acquires criminal property
- uses criminal property
- has possession of criminal property

Section 330 – Failure to Disclose: Regulated Sector

- This offence will be committed if a person working within the regulated sector fails to report money laundering where they either know or suspect, or they should have known or suspected, money laundering.

It is an Objective test.



Proceeds of Criminal Conduct

- An institution/employee will have to report either a customer or a third party as soon as they have reasonable grounds to suspect that the customer or third party is in possession of the benefit of a crime



All Crimes

- All criminal offences that generate a benefit will be caught because the criminal is immediately in possession!
- Thus there is a requirement to report ALL criminal proceeds, not just money laundering through the institution



When must you report

- Anyone in the Regulated Sector must now report when they have:
- Knowledge
- Suspicion

OR

- Reasonable grounds for knowledge or suspicion



Money Laundering Reporting Officer (MLRO)



When do you Report?

- To avoid committing the offence of 'Failure to Report' you must make a report as soon as is practical after the information or other matter comes to you.
- So you could be reporting
 - After the event
 - Before the event

Appropriate Consent

POCA STATUTORY TIMESCALES:

The “notice period” commences the day after a report is made and lasts for seven working days. If appropriate consent, or no communication, is received from the NCA during this period the you may safely proceed.

OR

If consent is refused within the notice period the transaction cannot safely proceed unless consent is given within the “moratorium period” or the moratorium period has expired. The moratorium period commences on the day that refusal is received and lasts for 31 days.

What activities should raise a suspicion?

- Unusual conduct within context of previous relationship activity
- Unusual conduct within context of the product or service
- Unusual conduct within the context of commercial rationale for the relationship



Recognising the characteristics of money laundering schemes

- You need to know your customers and what you expect to 'see'
- You need to know your business and what you expect to 'see and handle'
- You need to be aware of the Typologies published by FATF and similar bodies and keep this knowledge up to date

Is there a defence for failure to report ?

- Such defences are covered in Section 330 (6)
- (6) But a person does not commit an offence under this section if-
- he has a reasonable excuse for not disclosing the information or other matter
 - he is a professional legal adviser and the information or other matter came to him in privileged circumstances
 - subsection (7) applies to him



Section 330 (7)

- (7) This subsection applies to a person if
- a) he does not know or suspect that another is engaged in money laundering; AND
 - b) he has not been provided by his employer with such training as is specified by the Secretary of State by order for the purpose of this section.

Money Laundering Regulations 2007

Regulation 21

A relevant person must take appropriate measures so that all relevant employees of his are-

- a) Made aware of the law relating to money laundering and terrorist financing; and
- b) Regularly given training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing



Tipping Off



Tipping off

- This offence is committed if knowing or suspecting that an appropriate officer is acting or proposing to act in connection with a confiscation investigation, a civil recovery investigation or a money laundering investigation and he makes a disclosure which is likely to prejudice the investigation or he falsifies, conceals, destroys or otherwise disposes of documents which are relevant to the investigation



Sanctions



Terrorist Asset-Freezing etc. Act 2010



Sanctions

- HM Treasury issues a Consolidated Sanctions List which contains those persons and entities designated by the UN, EC or the UK and freezes all their assets.



Sanctions - Offences

- Under this legislation it is a criminal offence for any natural or legal person to:
 - Deal with the funds of designated persons
 - Make funds, economic resources or financial services available to designated persons
 - Knowingly participate in activities (directly or indirectly through intermediaries such as lawyers or accountants) which would either circumvent or commission an offence relating to the above



Practical Needs and Problems

- We have looked at the requirements so what are the practical difficulties?
- Now it is over to you to raise any practical problems or questions



And Finally Any Questions ?

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