# PRESENTATION TO AAT

# Practice Management Event 22 March 2014 BY

Richard F Simms FCA





# **OVERVIEW**

- Risk Assessments
- Customer Due Diligence
- Eight steps to compliance
- Summary



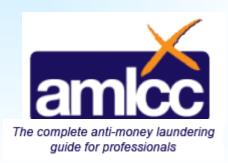




- Identify
- Assess
- Implement
- Monitor
- Record







- Identify the ML & terrorist financing risks
- Assess the risks
- Implement controls to manage risks
- Monitor the operation of controls
- Appropriate recording keeping







# Identify

- > Size and structure of business
- > Business activities
- Products and services





- Assessing the risks (1)
  - > Types of clients
  - > Geographical area of clients
  - > How you engage your clients







- Assessing the risks (2)
  - > Client's business activities
  - Payment processes is it cash based?
  - > Movement of client's funds





- Clients who pose a risk (1)
  - Clients who carry out large one-off transactions
  - Clients who are not local to your business
  - Clients who handle large amounts of cash







- Clients who pose a risk (2)
  - > Complicated ownership structure
  - Regular transactions to the same group/individual
  - Unwilling to provide evidence of ID







- Implement the risk
  - > Apply Customer Due Diligence
  - Ongoing monitoring





# Monitoring the risk

- > Sudden increase in business
- Unusual transactions
- > Untypical types of customer





# Record Keeping

- Demonstrate to Supervisory Body that procedures are in place
- > Records what has been done and why







# Summary

- > Regular assessments
- > Appropriate monitoring procedures
- > Regularly review and test procedures







- From 15 December 2007, you must carry out customer due diligence on a risk sensitive basis
- CDD required on both new and existing clients







- Establishing a relationship
  - > Identify and verify client's identity
  - Identify the beneficial owner(s) and control structure
  - Obtain information on the purposes and intended nature of the business relationship





- Establishing a relationship
  - > Details of the client's business activity
  - Understand the source and origin of the funds
  - Beneficial owners







- Identifying & verifying clients
  - Government issued documents e.g. passport
  - Information held by credit reference agencies
  - > Bank statements, utility bills etc.





- CDD Rules include concept of:
  - > 'Simplified' due diligence (Lower risk)
  - 'Normal' due diligence (Normal risk)
  - > 'Enhanced' due diligence (Higher risk)







### 'Simplified'

- Credit or financial institution subject to MLR
- Listed companies (excludes AIM and PLUS)
- UK Public Authorities

#### 'Enhanced'

- Client not physically present
- Politically exposed persons (PEPs)
  - PEP individual who has been entrusted with a prominent public function or is closely related





- 'Prohibited'
  - Shell Banks financial institutions with no physical presence and no real business is conducted
  - Countries with deficiencies in their antimoney laundering regimes – refer to FATF non-cooperative countries







- 'Prohibited'
  - Refer to HM Treasury's publication
    - https://www.gov.uk/government/publications/money-laundering-and-terrorist-financing-controls-in-overseas-jurisdictions-advisory-notice
  - > HM Treasury email service
    - http://engage.hm-treasury.gov.uk/fin-sancsubscribe/





- 'Simplified' CDD Measures
  - Reduce the on-going monitoring based on a reasonable monetary threshold
  - Reduce the frequency of customer identification updates
  - Simplified CDD measures are NOT acceptable if there is suspicion of money laundering





- 'Enhanced' CDD Measures
  - Obtain additional information
  - Obtain information on the reasons for transactions
  - Request 1<sup>st</sup> payment from account in the customer's name with a bank similar to CDD standards





# WHAT ELSE COULD INDICATE HIGH RISK?

- Other reports in the past
- Cash based business
- Adverse press coverage
- Purpose of business not clear
- Previous HMRC investigations





# BENEFICIAL OWNER

#### What is a beneficial owner?

### Corporate bodies

- Individual who owns or controls more than 25% of shares or voting rights
- Partnerships
  - Individual who controls/entitled to more than 25% of the capital or profits
- Charities
  - Usually trustees







# BENEFICIAL OWNER

#### What is a beneficial owner?

- Trusts
  - ➤ Individual who is entitled to a specified interest in at least 25% of the capital or trust controller
- Estates of deceased persons
  - > Executor or administrator of the estate





# WHAT IS KNOWLEDGE OR SUSPICION?

- Not defined in legislation
- Actual knowledge that something is the case
- Suspicion is more definite than speculation
- Falls short of knowledge based on evidence







# WHAT IS KNOWLEDGE OR SUSPICION?

- Must be criminal conduct proceeds of innocent errors are not criminal property
- Reasonable grounds
  - Not yet tested by Courts
  - Would an 'honest' and 'reasonable' person in your position have had knowledge that money laundering was taking place?
  - Cannot turn a 'blind eye'





# WHAT IS KNOWLEDGE OR SUSPICION?

- "He is a scrap dealer, all scrap dealers are criminals, he is a criminal"
  - > This is not suspicion!
- Do not need to identify the crime or gather sufficient evidence to enable it to be proved in a court of law
- If unsure....report the suspicion







# TIPPING OFF

- Do not tip off the relevant person
- Do not tell anyone that a report has been made
- Asking normal questions is not tipping off
- Asking unnecessary questions or investigating further may make you liable







# CONFIDENTIALITY

- SAR to NCA can have adverse effects on client relationship
  - NCA National Crime Agency replaced SOCA as from 7 October 2013
  - > www.nationalcrimeagency.gov.uk
- Maintaining the confidentiality of SARs is important to NCA
- Agencies that are involved have a duty to keep source confidential



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# CONFIDENTIALITY

- MLROs should take steps to protect confidential source
- Only refer to source's name once in the source ID field but nowhere else
- Do not refer to names of staff that made internal report
- Highlight any particular concerns about safety (physical, reputational etc.)







# CONFIDENTIALITY

- Cannot be sued for breach of confidentiality when report to NCA provided
  - > Report is made properly and promptly
  - You acted in good faith





guide for professionals

# **RECORD KEEPING**

- Clients' identity
- Supporting evidence of verification
- Business relationship
- Occasional transactions
- Kept for 5 years after termination of business relationship





# CONTINUING CUSTOMER DUE DILIGENCE

- Must be on an on going basis
- Regular monitoring
- Significant changes in business
- Changes in appointments of senior managers / shareholders require checks





# **NON-COMPLIANCE**

- Client refusal
  - Do not proceed with relationship
  - > Terminate existing relationships
  - > Consider if report is appropriate





# EIGHT STEPS TO COMPLIANCE (1)

#### **Appoint MLRO**

- Senior position
- Internal reports
- Appoint DMLRO







# EIGHT STEPS TO COMPLIANCE (2)

#### **Compliance Manual**

- Best practice
- Reference tool
- Include policy statement







# EIGHT STEPS TO COMPLIANCE (3)

#### **Training**

- 'Relevant employees'
- Annually
- Can be tailored







# EIGHT STEPS TO COMPLIANCE (4)

#### **Verify clients**

- Part of CDD
- Manual or electronic
- Beneficial owners





# EIGHT STEPS TO COMPLIANCE (5)

#### Risk based approach

- Understand risk client poses
- Obtain information on client
- Use manual forms
- Existing clients separate list







# EIGHT STEPS TO COMPLIANCE (6)

#### Reporting

- Reporting procedures in place
- Staff to MLRO
- MLRO to NCA
- Document decisions





# EIGHT STEPS TO COMPLIANCE (7)

#### Record keeping

- Be able to prove compliance
- Training, risk assessments, reports etc.
- Manual or electronically





# EIGHT STEPS TO COMPLIANCE (8)

#### Be supervised

- Register
- 22 professional bodies
- HMRC

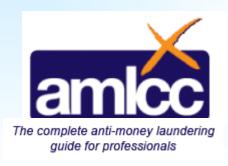




### SOURCE OF INFORMATION

- The Consultative Committee of Accountancy Bodies (115 pages)
  - With ML Regulations 2007, POCA 2002 & CTA 2000
- HMRC Notice MLR8 (79 pages)
- Compliance departments at your Supervisory Body





### **SUMMARY**

- 1. Appoint MLRO
- 2. Compliance manual
- 3. Training
- 4. Verify clients







### **ML OFFENCES**

- Standard Chartered Bank £7.6m
   fine for failure to comply
- TV Boss jailed for insurance scam
  - 124 false claims linked to company owned by TV boss
- Doorstop fraud
  - Cold calling contractors charged £16,400 for work assessed at £590
  - Builder jailed for 7 years for overcharging for poor workmanship – wife guilty for handling bank affairs



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### **ML OFFENCES**

- Family jailed and ordered to pay back £423,942
  - > Sale of counterfeit goods and drug trade
- Family of 8 arrested in £51M ML probe connected to tax evasion
  - HMRC encourage tax fraud to be reported to Customs Hotline







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### **CONTACT DETAILS**

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