

Money Laundering and the Proceeds of Crime

Recent times have seen tough new rules introduced to crack down on money laundering and the proceeds of crime. The new rules affect a wide range of people and in this factsheet we consider how your organisation may be affected.

Money Laundering - a Definition

Most of us imagine money launderers to be criminals involved in drug trafficking or terrorism or to be someone like Al Capone. However recent legislation has expanded significantly the definition of what we 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 Rules

Two key pieces of legislation have been introduced:

- the Proceeds of Crime Act 2002 (The Act) and
- the Money Laundering Regulations 2003 (The Regulations).

The Act

The Act re-defines money laundering and the money laundering offences, and creates new mechanisms for investigating and recovering the proceeds of crime. The Act also revises and consolidates the requirement for those affected to report knowledge, suspicion or reasonable grounds to suspect money laundering. See the panel below for some of the more technical terms of the Act. More recently, the Proceeds of Crime Act has been amended by the Serious Organised Crime and Police Act 2005.

The Regulations

The Regulations contain the detailed procedural requirements for those affected by the legislation. In the main, the new Regulations came into force on 1 March 2004.

Proceeds of Crime Act - technical terms

Under the Act, someone is engaged in money laundering if they:

- conceal, disguise, convert, transfer or remove (from the United Kingdom) criminal property
- enter into or become concerned in an arrangement which they know or suspect facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person or
- acquire, use or have possession of criminal property.

Property is criminal property if it:

- constitutes a person's benefit in whole or in part (including pecuniary and proprietary benefit) from criminal conduct or
- represents such a benefit directly or indirectly, in whole or in part and
- the alleged offender knows or suspects that it constitutes or represents such a benefit.

Who is Caught by the New Legislation?

Certain businesses have been affected by anti-money laundering rules for some time, for example, banks and other financial institutions. These businesses have been required to put in place specific arrangements to prevent and detect money laundering.

The new regime requires many more businesses to introduce procedures to combat money laundering and the criminal activity that underlies it. As money launderers have resorted to more sophisticated ways of disguising the source of their funds, new legislation aimed at catching those involved has become necessary.

The regulated sector

The legislation relates to anyone in what is termed as the 'regulated sector', which includes but is not limited to:

- accountants and auditors
- tax advisers
- dealers in high value goods (including auctioneers) whenever a transaction involves accepting a total cash payment equivalent to €15,000 (around £10,000) or more
- casinos
- estate agents
- some management consultancy services
- company formation agents
- insolvency practitioners
- legal advisers
- bureau de change.

The Implications of Being in the Regulated Sector

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

- confirm the identity of new clients
- appoint a Money Laundering Nominated Officer (MLNO) to whom money laundering reports must be made
- establish systems and procedures to forestall and prevent money laundering and
- provide relevant individuals with training on money laundering and awareness of their procedures in relation to money laundering.

If your business is caught by the definition you may have received guidance from your professional or trade body on how the requirements affect you and your business. Those of you who are classified as High Value Dealers may be interested in our factsheet of the same name, which considers how the Regulations affect those with high value cash sales.

The Implications for Customers or Clients of Those in the Regulated Sector

As you can see from the list above, quite a wide range of professionals and other businesses are affected by the legislation. Those affected must comply with the new laws or face the prospect of criminal liability (both fines and possible imprisonment) where they do not.

Procedural changes - new clients

In your dealings with any business that is affected by the legislation you may have already noticed a few procedural changes. For example, in common with banks and other financial institutions, accountants are now required to verify the identity of new clients.

In most cases this will involve seeing and taking copies of:

- photographic identification such as a passport or new style driving licence and
- a recent utility bill.

These are needed to establish both an individual's identity and current address.

For those of you in business or operating a charity for example, the identity of your organisation itself must be established, perhaps by checking records at Companies House or at the Charity Commission. The law requires these records to be maintained for five years after a client relationship has ended.

Procedural changes - existing clients

While there is no specific requirement to verify identity for existing clients (at 1 March 2004), this may be necessary, for example, where a new director or shareholder or a new partner is introduced into a company or partnership respectively.

Procedural changes - reporting

As mentioned above, the definition of money laundering has been extended to include the proceeds of any crime. Those in the regulated sector are required to report knowledge or suspicion (or where they have reasonable grounds for knowing or suspecting) that a person is engaged in money laundering ie has committed a criminal offence and has benefited from the proceeds of that crime. These reports should be made in accordance with agreed internal procedures, firstly to the MLNO, who must decide whether or not to pass the report on to the Serious Organised Crime Agency (SOCA).

Serious Organised Crime Agency (SOCA)

SOCA is a law enforcement agency created to reduce the harm caused to people and communities in the UK by serious organised crime. This new agency has been formed from the amalgamation of the National Crime Squad, The National Criminal Intelligence Service and specialist departments of HMRC and the UK Immigration service. Part of the role of SOCA is to analyse the suspicious activity reports (SARs) received from those in the regulated sector and to then disseminate this information to the relevant law enforcement agency.

The Regulations require those in the regulated sector to report all suspicions of money laundering to SOCA. By acting as a coordinating body, SOCA collates information from a number of different sources. This could potentially build up a picture of the criminal activities of a particular individual, which only become apparent when looked at as a whole. This information can then be passed on to the relevant authorities to take action.

Is Your Business Vulnerable?

Criminals are constantly searching for new contacts to help them with their money laundering. Certain types of business are more vulnerable than others. For example, any business that uses or receives significant amounts of cash can be particularly attractive. To counter this, the Regulations now require businesses that deal in goods and accept cash equivalent to €15,000 (around £10,000) to register with HMRC and implement anti-money laundering procedures.

You can imagine that if a drug dealer went along to a bank on Monday morning and tried to pay in the weekend's takings, the bank would notice it and report it unless the sum was relatively small. If criminals can find a legitimate business to help them by taking the cash and pretending that it is the business's money being paid in (in exchange for a proportion!), then that business can put the cash into the bank without any questions being asked.

Take for example the mobile telephone business that has had a fairly steady turnover of £10,000 per week for the last couple of years but suddenly begins to bank £100,000 in cash each week. Without a clear, rational and plausible explanation, this type of suspicious activity would clearly be reported to SOCA.

Perhaps a less obvious example of possible money laundering could be where an individual comes into an antiques shop and offers to buy a piece of furniture for £12,000 in cash. Not too many sellers would have insisted upon a cheque in the past! This person may be a money launderer who then goes to another shop and sells the antique for say £9,000, being quite prepared to suffer the apparent loss. This time the criminal asks for a cheque that can then be paid innocently into a bank account, making the money look legitimate.

The legislation aims to put a stop to this type of activity. Those in the regulated sector are required to report any transactions that they have suspicions about. Also, it is not simply the more obvious examples of suspicious activities that have to be reported. For the majority of those regulated, the government has insisted upon there being no de minimis limits within the legislation. This means that very small proceeds of crime have to be reported to SOCA.

Tipping Off

There is also an offence known as 'tipping off' under the Act. This is what would happen if a person in the regulated sector were to reveal that they knew or thought that a suspicious activity report had been made, say for example, to their customer or client. Where this disclosure would be likely to prejudice any investigation by the authorities, an offence may be committed. As you can imagine therefore, if you were to ask an accountant or estate agent whether they had made any reports about you, they would not be able to discuss this with you at all. If they did, they could break the law and could face a fine or up to five years imprisonment or both.

How We Can Help

The legislation brings a number of professions and businesses into the regulated sector. Complying with the requirements of both the Act and the Regulations requires those affected to introduce a number of new procedures to ensure that they meet their legal responsibilities. If you would like to discuss how the legislation could affect you and your organisation please do contact us.

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