IN THE MATTER OF

THE INSTITUTE OF CERTIFIED BOOKKEEPERS' PROFESSIONAL CONDUCT RULES

REVISED GUIDANCE AND RULES IN THE LIGHT OF THE MONEY LAUNDERING REGULATIONS 2007

2nd Draft: Under the Direct Access Rules

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NEW GUIDANCE ON MONEY LAUNDERING
WITH EFFECT FROM 15TH DECEMBER 2007

This guidance summarises only the key elements of the law that affects you. Reading this guidance is not a substitute for reading the relevant statutes and regulations. If you are in doubt as regards your obligations, seek legal advice immediately.

What exactly is money laundering?

The three principal money laundering offences are contained in sections 327, 328 and 329 of the Proceeds of Crime Act 2002. These offences are triable either in a Magistrates' Court or in the Crown Court and are punishable on conviction on indictment in the Crown Court by a maximum of 14 years imprisonment and/or a fine.

Section 327 - An offence is committed if a person conceals, disguises, converts, transfers or removes from the jurisdiction property which is, or represents, the proceeds of crime which the person knows or suspects represents the proceeds of crime.

Section 328 - An offence is committed when a person enters into or becomes concerned in an arrangement which he knows or suspects will facilitate another person to acquire, retain, use or control criminal property and the person knows or suspects that the property is criminal property.

Section 329 - An offence is committed when a person acquires, uses or has possession of property which he knows or suspects represents the proceeds of crime.

All three of the principal money laundering offences contain certain defences. For example, in the case of each of these offences it is a defence to have made an authorised disclosure to, and obtain appropriate consent from, the authorities before doing the act which would constitute the offence (see sections 335 and 338 of the Act).

Similar offences are also created under the Terrorism Act 2000. Section 15 criminalises fund-raising for terrorist activity, receiving property intended for terrorism and financing terrorism. Section 16 criminalises the use of money or property for terrorism or the possession of money or property with the intention of using it for terrorism. Section 17 criminalises involvement in arrangements for transfer of money or property for possible terrorist purposes. Section 18 criminalises the money laundering of terrorist property. The offences also apply to persons who have either actual knowledge of the intention to apply funds for

terrorist purposes or where that person had reasonable cause to suspect that the property would be used for the purposes of terrorism.

The legal obligation on the regulated sector to submit suspicious activity reports in relation to terrorism is set out at Section 21A of TACT. It is no excuse that the involvement was only at a very minor level, nor is there a specification for transaction data; the report can be on suspicious activity, thus ensuring the widest possible scope for reporting.

So what counts as the "proceeds of crime"?

Criminal property is the benefit of any crime, in whole or any part, whether direct or indirect. It does not matter who committed the crime. It does not matter who benefited. It does not matter when the crime took place. A graphic example is the jewellery of the gangster's moll – because ultimately the money came from a crime, when she puts it on she is in possession of "criminal property" and liable for money laundering.

"Terrorist property" covers money and every other kind of property or possession which is likely to be used for the purposes of terrorism (including any resources of a proscribed organisation) or is the proceeds of the commission of acts of terrorism or the proceeds of acts carried out for the purposes of terrorism. The definition is extremely widely drawn. Thus the proceeds of an act includes any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission). The reference to an organisation's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the organisation.

Tell me about the authorised disclosure defence?

The most important defence is an "authorised disclosure" – that is to say you disclosed to a Money Laundering Reporting Officer (MLRO) who passes it on to the Serious Organised Crime Agency (SOCA), customs officer or constable in the form required and either

- before you did the act prohibited by sections 327-329,
- while you are doing the act prohibited by s.327-329, the act having begun at a point when you did not know or suspect that the property is the proceeds of crime and the disclosure being made on your own initiative as soon as practicable after you first knew or suspected that the property was the proceeds of crime, or
- after the act prohibited by s.327-329 and is made on your own initiative as soon as practicable after the act

If you need to deal with the property you should ask for prior consent to do so from the person you made disclosure to. The Economic Crime Unit of SOCA can be contacted at Serious Organised Crime Agency, PO Box 8000, London SE11 5EN (telephone 0207 238 8282). Reports to SOCA must be made as soon as practicable.

When seeking consent it is important to identify as clearly as possible:

- the suspected benefit from criminal conduct (the "criminal property"), including where possible the amount of benefit
- the reason(s) for suspecting that property is criminal property
- the proposed prohibited act(s) the reporter seeks to undertake involving the criminal property
- the other party or parties involved in dealing with the criminal property including their dates of birth and addresses where appropriate

A key element of consent is the specification of time limits within which the authorities must respond to an authorised disclosure in circumstances where a consent decision is required. The law specifies that consent decisions must be made within 7 working days (starting the day after disclosure was made and not counting bank holidays and weekends). In the first instance, a consent decision will usually be communicated to the reporter by telephone in order to provide the quickest possible response. SOCA will also send a letter by post recording the decision but there is no requirement to wait for this letter in order to proceed with the prohibited act if consent has been granted verbally.

If nothing is heard within that time, then you can go ahead with an otherwise prohibited act without an offence being committed.

If consent is withheld within the 7 working days, then the authorities have a further 31 calendar days (starting on the day the notice is given and including weekends and public holidays) in which to take further action such as seeking a court order to restrain the assets in question. If nothing is heard after the end of the 31 day period, then you can proceed with the transaction without committing an offence.

Extra duty on the regulated profession

It is more serious for members of the regulated profession. They commit a criminal offence under section 330 Proceeds of Crime Act 2002 if

- they knew or suspected or had reasonable grounds for suspecting that anther person is committing money laundering and
- they discovered this from information you got from working in the regulated sector and
- They failed to disclose that to SOCA or your nominated money laundering officer.

Who are members of the regulated sector?

The regulated sector includes:-

- credit institutions
- financial institutions
- auditors
- insolvency practitioners
- external accountancy service providers
- tax advisers
- independent legal professionals
- trust or company service providers
- estate agents
- casinos
- Anyone who deals in goods of any description by way of business (including dealing as an auctioneer) whenever a transaction or series of transactions involves accepting a total cash payment equivalent to 15,000 euros or more.

So am I part of the regulated sector?

Doubts had previously been expressed as to whether bookkeepers fell within "the regulated sector" given the references are to those providing "accounting services" whilst bookkeepers provide bookkeeping services, which are distinct and different.

Certified bookkeepers in private practice should now assume that the Money Laundering Regulations 2007 do apply to them, that they are members of the regulated sector and that they must comply with the Regulations.

Are there any other duties on members of the regulated sector?

Yes. From 15th December 2007 under the Money Laundering Regulations 2007 the regulated sector now has to have implemented polices and procedures for:-

- Customer due diligence and ongoing monitoring
- Reporting procedures
- Internal control
- Risk assessment and management
- staff training

What should those policies and procedures include?

The policies and procedures should set out

- how to identify and examine complex or unusually large transactions, unusual patterns of transactions which have no apparent economic or visible lawful purpose and any other activity which the relevant person regards as particularly likely by its nature to be related to money laundering or terrorist financing
- which specify the taking of additional measures, where appropriate, to prevent the use for money laundering or terrorist financing of products and transactions which might favour anonymity
- to determine whether a customer is a "politically exposed person"
- if the accountant is not a sole proprietor with no employees, identifying a member of staff as the "money laundering reporting officer" and requiring that staff report to him with money laundering information and vesting him with the responsibility for considering whether there are grounds for suspect money laundering or terrorist financing

What does customer due diligence involve?

You need to undertake customer due diligence each time you establish a business relationship with a customer and each time you undertake work for a client.

Customer due diligence involves

- identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source, e.g. his passport, driver's license, bank statement or tax return
- identifying, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify his identity so that the relevant person is satisfied that he knows who the beneficial owner is, including, in the case of a legal

person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement; and
- obtaining information on the purpose and intended nature of the business relationship.

Identification needs to be made as soon as possible after first contact and certainly no work should be undertaken without getting identification. If your client is an intermediary, you need satisfactory proof of identity of both the intermediary used and his ultimate client.

When looking at the client's beneficial ownership, you need to identify any person who owns 25% or more of the voting rights or shares in the entity.

Thus if you prepare a customer's books annually you will need to review the customer due diligence each year – thus even if you have proof of address and identity on record, you will need to confirm that the client's address is current and the client has not changed his name and you will need to consider whether the present work is consistent with the picture of trading you have of your client.

Do I have to use the record form prepared by the Institute?

No you don't. The Institute suggests that you might wish to however. The record form is designed as a ready reckoner to help remind you of the sort of thing that you might need to consider and help you comply with the Regulations and the Institute's Rules. It will also help you show the Institute when they undertake monitoring to confirm that you are complying with the Regulations.

What do I do if I cannot comply with the customer due diligence requirements?

You must

- not carry out a transaction with or for the customer through a bank account
- not establish a business relationship or carry out an occasional transaction with the customer;
- terminate any existing business relationship with the customer
- consider whether you are required to make a disclosure by Part 7 of the Proceeds of Crime Act 2002 or Part 3 of the Terrorism Act 2000.
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What does "on a risk sensitive basis" mean?

The degree of due diligence you undertake should reflect the type of client, business relationship and transaction involved.

Remember that you will need to be in a position to demonstrate to the Institute that the extent of the measures you adopted in respect of your customer was appropriate.

So how do I know when to take more or indeed less care?

There are provisions under the Money Laundering Regulations 2007 for simplified due diligence in respect of certain transactions and customers such as UK and EEA credit and financial institutions, public authorities, independent legal professionals and companies whose securities are listed on a regulated market who are themselves already subject to disclosure obligations. Further you can also rely on customer due diligence already conducted by other professionals or financial institutions provided they under a duty under the Money Laundering Regulations 2007 or its EEA member state equivalent and they agree to let you do so.

You will need to take extra care if, for example,

- The situation by its nature can present a higher risk of money laundering or terrorist financing
- The customer is not physically present for identification purposes
- The customer is a politically exposed person - that is to say someone who in the previous year has been entrusted with a prominent public function by a state other than the UK, a community institution or international body or one of their associates or immediate family

Who are politically exposed persons?

These include heads of state, heads of government, ministers and deputy or assistant ministers, members of parliaments, members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not generally subject to further appeal, other than in exceptional circumstances, members of courts of auditors or of the boards of central banks, ambassadors, chargés d'affaires and high-ranking officers in the armed forces, members of the administrative, management or supervisory bodies of state-owned enterprises.

Who falls within the definition of an "associate" or a member of ones "immediate family"?

An associate for these purposes includes any individual who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with the person and any individual who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of the person.

A member of ones immediate family means a spouse, a partner (that is to say someone in a relationship considered under their national law to be equivalent to a spouse), children and their spouses or partners and parents.

Is this just a one off thing I have to do for all new customers?

No. You are under an ongoing duty to monitor clients. You need to scrutinise transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with the relevant person's knowledge of the customer, his business and risk profile. It also involves keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date.

And record keeping?

You need to keep records of your client identification evidence and of any client transactions. The Money Laundering Regulations 2007 provide that records must be kept for at least 5 years from the last transaction or from the end of the business relationship. However the Institute has stricter rules and requires you to keep your records for at least 6 years from the last transaction or from the end of the business relationship.

What does internal reporting involve?

This simply involves appointing a Money Laundering Reporting Officer responsible for receiving disclosures, assessing them (Is he suspicious or does he have grounds for suspicion?) and passing them on to SOCA.

And staff training?

All staff need to be trained about the Money Laundering Regulations 2007, The Proceeds of Crime Act 2002 and section 18 and 21A Terrorism Act 2000. Furthermore employers are obliged to train all employees about how to recognise and deal with money laundering transactions

And if we don't put these procedures in place?

You can get a criminal conviction and could face up to 2 years in prison and a fine.

So who is going to police this?

Your Institute is under a duty to ensure that your compliance with the Regulations is effectively monitored. In practice this will involve the Institute sending someone to your offices and inspecting your money laundering compliance records and client files.

Can't I get round having an inspection if I resign from the Institute?

The Institute will regard any failure by a Member to co-operate with it in its performance of its statutory duties very seriously. Moreover even if a Member was able to put himself outside the scope of the Institute's powers, this will not in any event prevent him from being inspected. The default regulator is Her Majesty's Revenue and Customs. If the Institute ceases to be able to conduct inspections, the taxman will conduct them.

What does my Institute expect me to do?

The Institute requires members at all times to comply with their legal obligations and considers that it is a matter of professional misconduct if they do not apply proper customer due diligence, reporting, record keeping and staff training procedures. The new professional conduct rules require you to:

- Disclose to SOCA if you know or have reasonable grounds for suspecting that another person is committing money laundering and you discover this through your work as a bookkeeper
- If you have your own practice
    - Immediately on being instructed, obtain evidence of your client's identity (and of the person who is paying your bill, if they are different)
    - Keep the records of your client identification evidence and of any client transactions for at least 6 years (instead of 5) from the last transaction or the end of the business relationship
    - Co-operate with the Institute when it undertakes its monitoring. This involves allowing them access to your premises and your client files and money laundering records and reimbursing the Institute for their expenses in undertaking the monitoring visit.
    - Appoint someone in your firm as a Money Laundering Reporting Officer responsible for receiving disclosures, assessing them and

passing them on to SOCA if appropriate (if you don't employ anyone, that person is you!)

- Ensure that you, and any staff you have, are trained about the Money Laundering Regulations 2007, The Proceeds of Crime Act 2002 and the Terrorism Act 2000

Please note that the Institute's Rules of Professional Conduct have been amended to incorporate members' obligations under the Money Laundering Regulations. The latest version of the rules is contained in section 6 of this manual. Please read them carefully.