

Risk Management: Your Anti-money Laundering Obligations and the Reporting of Suspicious Activity



Introduction

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 came into force on Monday 26 June 2017 as required under the Fourth EU Money Laundering Directive. Independent legal professionals, including regulated entities, are required to have in place policies and procedures to prevent activities related to money laundering and terrorist financing.

Money laundering is the generic term used to describe the process by which criminals disguise the original ownership and control of the proceeds of criminal conduct by making such proceeds appear to have derived from a legitimate source. Money laundering also includes money that is used to fund terrorism.

Every business covered by the money laundering regulations must be supervised by a supervisory authority. CILEx became an approved supervisory authority on 6 February 2015. Your business will be supervised by CILEx Regulation as the independent regulator of CILEx members, CILEx Practitioners, and entities.

You must understand and comply with your anti-money laundering obligations. CILEx is committed to assisting you to meet these obligations.

The Money Laundering Regulations 2017

The Money Laundering Regulations 2017 set administrative requirements for the anti-money laundering regime within the regulated sector and outline the scope of customer due diligence.

These regulations aim to limit the use of professional services for money laundering by requiring professionals to know their clients and monitor the use of their services by clients.

Application of Regulations (Regulation 8)

The regulations apply to persons acting in the course of businesses carried on in the UK in the following areas:

- Credit institutions.
- Financial institutions.
- Auditors, insolvency practitioners, external accountants and tax advisers.
- Independent legal professionals.
- Trust or company service providers.
- Estate agents.
- High-value dealers.
- Casinos.

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Independent legal professional (Regulation 12)

An independent legal professional includes a firm or a sole practitioner who provides legal or notarial services to other persons, when participating in financial or real property transactions concerning:

- Buying and selling of real property or business entities.
- Managing of client money, securities or other assets.
- Opening or management of bank, savings or securities accounts.
- Organisation of contributions necessary for the creation, operation or management of companies.
- Creation, operation or management of trusts, companies, foundations or similar structures.

You will be participating in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transactions.

It does not include lawyers employed by a public authority or working in-house.

Trust or company service provider (Regulation 12)

This means a firm or sole practitioner who by way of business provides any of the following services to other persons:

- Forming companies or other legal persons
- Acting or arranging for another person to act as a director or secretary of a limited company; as a partner of a partnership or in a similar capacity in relation to another legal person
- Providing a registered office, business address or administrative address for the above
- Acting or arranging for another person to act as a trustee or nominee shareholder.

Activities not covered by the regulations

The Treasury has confirmed that the following would not generally be viewed as participation in financial transactions:

- Payment on account of costs to a solicitor or payment of a solicitor's bill.
- Provision of legal advice.
- Participation in litigation or a form of alternative dispute resolution.
- Will writing, although you should consider whether any accompanying taxation advice is covered.
- Work funded by the Legal Aid Agency.

If you are uncertain whether the regulations apply to your work, seek legal advice on the individual circumstances of your practice or simply take the broadest of the possible approaches to comply with the regulations.

Working elsewhere in the regulated sector

When deciding whether you are within the regulated sector for the purpose of the regulations, you also need to consider whether you offer services bringing you within the definitions of a tax adviser, insolvency practitioner, or trust or company service provider. You must also consider the full range of related services, such as tax planning and tax compliance work.

You will also need to consider whether your firm undertakes activities falling within the definition of a financial institution. When considering this, you should note that a will is not a designated investment, so storing it is not a safe custody service, and is not covered by the regulations.

Simply being nominated as a trustee under a will does not amount to being a trust and company service provider, because the trust is not formed until the testator's death.

If you are an independent legal professional within the regulated sector and you also fall into another category, such as work regulated by the Financial Conduct Authority (FCA), this may affect your supervision under these regulations.

Working in the unregulated sector

You must consider whether the activities you carry out, even if within an unregulated firm, mean that you are subject to these regulations. For example, by carrying out estate administrations' and holding client money or providing company formation services.

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You should check with CILEx Regulation that you are being supervised by them for AML to ensure you are compliant with the regulations.

AML Guidance

The legal sector has moved towards one set of AML guidance to provide consistency in approach. This can be found on the Money Laundering page on the CILEx Regulation website.

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 can be found at: http://www.legislation.gov.uk/ukxi/2017/692/pdfs/ukxi_20170692_en.pdf.

Suspicious Activity Reports (SARs)

Anyone in your entity must report any suspicious transaction or activity they become aware of to the Money Laundering Reporting Officer (MLRO). It's the MLRO's responsibility to decide whether they need to send a report or 'disclosure' about the incident to the National Crime Agency (NCA). They do this by making a Suspicious Activity Report.

The NCA receives and analyses SARs, and uses them to identify the proceeds of crime. It counters money laundering and terrorism by passing on important information to law enforcement agencies so they can take action. Each year the NCA produces an analysis of SARs it receives for consent to proceed with transactions ("consent SARs"). We recommend that MLRO's review this document annually.

Under the Proceeds of Crime Act 2002 you are required to submit an SAR to the NCA if you know or suspect, or have reason to know or suspect, that an individual is engaged in money laundering and the information has come to you in the course of your business. There are similar obligations to submit SARs in relation to terrorist financing offences under the Terrorism Act 2000.

Historically the NCA concluded that a disproportionately high percentage of reports received from the legal sector were of poor quality because firms were providing inadequate information. The NCA has published detailed guidance for firms to follow at How to report SARs.

The implications of not disclosing

Failure to make a disclosure to the NCA in appropriate circumstances can in itself be a criminal offence, and proceeding with a transaction in the absence of consent may result in the commission of a principal money laundering offence.

Our expectations

You should have regard to the Principles, and supporting Outcomes, in the CILEx Code of Conduct, particularly with regard to Principle Four, in order to comply with your legal and regulatory obligations.

We expect all firms and individuals regulated by us to comply with the NCA guidance on the SARS regime.

Further support

Guidance on completing SARs making consent requests and the closure of inadequate consent SARs can be found on the National Crime Agency website under publications at: www.nationalcrimeagency.gov.uk

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