



NO PERSON OR COMPANY IS EXEMPT FROM THE NEW MONEY LAUNDERING REGULATIONS, WHICH CAME INTO PLAY ON 1 MARCH, AS TONY MARKS OF CMS CAMERON MCKENNA EXPLAINS.

CRACKING DOWN ON CRIME

The main focus of money laundering regulation has until recently been largely concentrated on the financial services industry. This has all changed with the coming into force on 1 March 2004 of the Money Laundering Regulations 2003 (the regulations), while other major changes have been introduced by the Proceeds of Crime Act 2002, which came into force in February 2003.

THE PROCEEDS OF CRIME ACT (POCA). This Act introduced some key changes to the existing criminal offences relating to money laundering. These offences relate to any person or company, whether or not they are a business within the scope of the Regulations, not just those in the financial services industry.

First, POCA has the effect of simplifying the existing law. Up to 2003, the various money laundering offences could be found in five different acts. This led to difficulties for the prosecution, and the purpose of consolidating all of the offences is to make the prosecution of money laundering simpler and obtain more convictions.

POCA also expands the scope of money laundering offences considerably. Under the old legislation, money laundering only took place where the proceeds of crime related to serious criminal conduct. Now, under POCA, the offences relate to the proceeds of crime from any criminal conduct, however minor.

Furthermore, where the conduct in question occurs abroad, even if that conduct is not an offence in the overseas country but would be an offence if it was committed in the UK, this conduct can nevertheless amount to criminal conduct for the purpose of establishing the money laundering offences. This means, for instance, that where a payment might be made in a foreign country to an agent, which is not a criminal offence in that country but would be criminal conduct (as a bribe) in the UK, the payment can amount to criminal conduct for the purpose of money laundering offences.

The money laundering offences themselves have been made wider so that any person or company that "enters into an arrangement in which the person or company knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person" then that person can be guilty of an offence under POCA. This is particularly relevant to those who have responsibility for handling corporate funds, since any payment or movement of monies could fall within an 'arrangement' if there is a knowledge or suspicion that criminal property is involved.

A further key change is the duty to report any suspicion or knowledge of money laundering, whether or not that person or company is entering into a transaction that comes to you in the course of a regulated business.

This standalone duty to report applies not only to the financial services sector, but also to all those categories of business to which the regulations apply (see below). The standalone duty to report is based on the standard of negligence; in other words, even if you do not actually have a suspicion, but if a reasonable person with your knowledge should have had a suspicion of money laundering, you can nevertheless be criminally liable. This is a personal responsibility in addition to that attaching the company for which you work.

The final point to note about POCA is a new system of reporting suspicions. Under the old legislation, where a company made a suspicious transaction report to the National Criminal Intelligence Service (NCIS), it was necessary to obtain NCIS's specific consent to proceed with transaction. Under POCA, there is now a procedure under which NCIS consent is deemed to be given: if a company makes a disclosure to NCIS and does not receive a reply within seven working days, then there is deemed consent to the transaction proceeding. If NCIS objects to the transaction proceeding, within the seven-day period, then a further period of 31 days moratorium applies, after which the transaction can proceed with deemed consent.

THE SCOPE OF THE REGULATIONS. The revised legislation require businesses within the scope of the regulations to implement certain procedures (see below). The types of business now covered have been considerably expanded by the regulations. In addition to financial services sector (which was covered by the 1993 Regulations), the new areas of business are as follows:

- auditors, external accountants and tax advisers;
- estate agents;
- notaries and other legal professionals acting for clients in any financial or property transactions;
- dealers in high value goods where a cash payment of €15,000 or more is made;
- casinos;
- bureaux de change; and
- provision of services in relation to the formation, operation or management of a company or trust.

There are a number of points that are worth noting about these categories of business. First, in relation to estate agents, the definition goes wider than partnerships of estate agents. Many property development companies that have their own sales offices, selling to members of the public will be included.

The category of dealers in high-value goods is also extremely wide. Businesses such as car dealers which accept deposits of €15,000 or more will have to put in place the necessary procedures, as will auctioneers and other dealers in high-value goods where cash deposits or payments are received.

Another interesting category is that of the provision of business services for the formation, operation or management of a company. This may be wide enough to include management consultancy services.

Over and above the new Regulations the requirements of the POCA continue to apply to all firms and all individuals whether or not in a regulated business, namely to report any suspicion of laundering the proceeds from, or finance likely to be used for any criminal activity.

WHAT IS REQUIRED UNDER THE REGULATIONS? In summary, the key requirements of the regulations are to put in place:

- identification procedures;
- record-keeping procedures;
- internal reporting procedures; and
- training of staff.

1. IDENTIFICATION PROCEDURES

1.1 WHEN ARE THESE REQUIRED?

- Where an organisation 'A' enters a business relationship with another party 'B', where it is likely that several transactions may be carried out during the relationship (as opposed to a one-off transaction), then 'A' must obtain suitable identification as to 'B' at the commencement of the business relationship.
- 'A' must also obtain identification as to 'B' on all one-off transactions in excess of €15,000. This also applies to smaller payments that are linked transactions which total £15,000 or more.
- The regulations require that the identification (ID) should be obtained as soon as reasonably practicable after contact is first made between 'A' and 'B'.

1.2 WHAT IS REQUIRED?

- 'A' must have procedures to ensure that 'B' produces satisfactory evidence of his or her identity or where satisfactory evidence of identity is not obtained the transaction must not proceed further.
- Satisfactory evidence is evidence which is reasonably capable of establishing:
 - i. that 'B' is the person he or she claims to be; and
 - ii. does in fact establish to the satisfaction of the person in 'A's organisation who obtains 'B' is the person they claim to be.
- The usual form of ID if 'B' is resident in the UK will be a:
 - iii. copy of their passport; and
 - iv. copy of recent utility bill with their home address.
- For a UK company obtain a copy of Company Search and ID of two directors.

2. RECORD-KEEPING PROCEDURES

- 'A' must maintain:
 - i. copies of the evidence of identity;

- ii. the record containing details relating to all transactions carried out; and
- for a period of five years commencing from the date of the completion of the transaction or the end of the business relationship.

3. INTERNAL REPORTING PROCEDURES

- 'A' must appoint a senior member of the organisation to be the Money Laundering Reporting Officer (MLRO).
- A must set up internal procedures for reporting to the MLRO:
 - i. a procedure needs to be put in place for employees to report any suspicious transaction to the MLRO. If employees do not report in accordance with the specified procedure, they themselves will not have made an authorised disclosure to the MLRO to protect themselves from being implicated in money laundering they could thus become personally liable for a criminal offence; and
 - ii. this does not prevent employees from talking informally to the MLRO before making a suspicious transaction report.

4. TRAIN RELEVANT EMPLOYEES TO BE AWARE OF THE REGULATIONS AND PART 7 PROCEEDS OF CRIME ACT OF 2002

- Areas to be covered:
 - i. identification procedures;
 - ii. recognising suspicious transactions; and
 - iii. how to report to the MLRO and how to avoid 'tipping off' the purchaser.

5. WHAT DO THESE CHANGES MEAN FOR TREASURERS?

Your bank will be subject to all these rules and with the renewed focus on money laundering will be taking ever more care in vetting your company's transactions routed through them. It may be wise to allow extra processing time on opening a new bank account, on letters of credit and indeed any payments that might appear out of the ordinary.

Companies whose business falls within the scope of the regulations are now obliged to implement the identification and reporting procedures outlined above. If they do not do so, they and their officers can be prosecuted for failing to implement the regulations. Companies should therefore look closely at the categories of business covered by the regulations to check whether they fall within their scope – and if necessary take advice.

The transfer or movement of funds by companies, where there the company or its employees have any suspicion as to the legitimacy of the source of the funds, will amount to a criminal offence unless disclosure is made to NCIS and the company obtains the consent of NCIS given to the transaction.

It is therefore prudent for all companies, whether or not they are within the scope of the new regulations, to implement procedures and controls to ensure they do not become the unwitting agent of the money launderer; and to enable them to make the required disclosure to NCIS, if they become aware of any activity that could amount to the laundering of the proceeds of crime.

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