

The Association of Corporate Treasurers

**A GUIDE TO THE LOAN MARKET  
ASSOCIATION  
DOCUMENTATION FOR INVESTMENT-  
GRADE BORROWERS**

**Money Laundering Regulations 2007 Update**

TREASURY, RISK  
AND FINANCE  
PROFESSIONALS

**ACT**

Prepared with assistance from

**SLAUGHTER AND MAY**

London, December 2007

## Guide to the LMA Loan Documentation: Money Laundering Regulations 2007 Update

The Money Laundering Regulations 2007 (the “2007 Regulations”) came into force on 15 December 2007 and have repealed and replaced the Money Laundering Regulations 2003. The 2007 Regulations implement the Third European Money Laundering Directive.

The 2007 Regulations have put onto a statutory footing some of the detailed guidance previously set out in the financial sector guidance notes prepared by the Joint Money Laundering Steering Group (the “JMLSG Guidance”). The JMLSG Guidance itself has been updated to reflect changes brought about by the 2007 Regulations; the current edition of the JMLSG Guidance is therefore now the November 2007 edition<sup>1</sup>.

The following is a summary of the key changes brought about the 2007 Regulations which are likely to have an impact on the relationship between a corporate treasury function and its bankers and brokers, including finance providers:

- Before providing services, including lending, to corporate customers, a bank or other financial institution (an “institution”) is required by the 2007 Regulation not only to identify and verify the identity of the customer itself but also now to:
  - identify and take adequate measures on a risk-sensitive basis to verify the identity of any person who beneficially owns or controls (whether through direct or indirect ownership or control) 25% or more of that customer or otherwise exercises control over the management of the customer; and
  - obtain information on the purpose and intended nature of any business relationship with that customer (i.e. ‘know-your-customer’s business’ due diligence, reflecting requirements implicit in the generally applicable regime under proceeds of crime legislation);

---

<sup>1</sup> See <http://www.jmlsg.org.uk/bba/jsp/polopoly.jsp?d=751&a=11454>

These requirements reflect to an extent previous best practice standards among major financial institutions. The introduction of these more prescriptive customer due diligence requirements should not cause an institution immediately to revisit all existing customer relationships to the extent that it had satisfied itself on all relevant KYC matters in respect of those customers with which it had formed a business relationship prior to 15 December 2007.

- An institution is also required by the 2007 Regulations to conduct ongoing monitoring of customer relationships, including scrutinising individual transactions and updating when necessary the identification information which it holds in respect of its customer. This obligation reflects to significant extent previous best practice; earlier editions of the JMLSG Guidance suggested that, applying a risk-based approach, an institution should periodically review and update (where necessary) the client identification information which it had collected in respect of its customers. This new statutory monitoring requirement might be expected to begin to have an effect in relation to business relationships with institutions which continue after 15 December 2007; in particular the requirement for a lending institution to update its KYC material could be expected to become relevant in circumstances where the nature of the business of a borrower, or its ownership structure, changes after that date. The most recent edition of the JMLSG Guidance encourages lenders to monitor on a periodic risk-sensitive basis for changes to the nature or status of a borrower in determining whether due diligence needs to be updated. The LMA may in due course therefore seek to modify Clause 20.7(a)(ii) of the LMA Agreement to reflect the fact that a change in status may not be the only circumstances in which Lenders may wish to update Borrower due diligence material.
- An institution is required to apply enhanced customer due diligence measures in certain circumstances; this is likely to include circumstances where its customer is located or engaged in business in a jurisdiction which presents a higher risk of money laundering, or where its customer is closely associated with a politically exposed person (which includes heads of state, government ministers, MPs, diplomatic staff and the senior management of state-owned enterprises). These requirements effectively give a statutory footing to recommendations which have been set out in the JMLSG Guidance for some time.
- The 2007 Regulations provide expressly that an institution may rely on the customer due diligence measures of certain other persons, provided that those other persons consent to being relied upon for that purpose. The persons on whom an institution may rely includes other institutions both within the EEA and, to the extent that such persons are subject to requirements equivalent to those imposed under the Third European Money Laundering Directive, outside the EEA. As such, there may now be greater scope for Borrowers to seek to require the Agent on a syndicated facility to act as a single point of distribution for all KYC material relating to the Borrower. An institution which relies upon another institution's due diligence measures will, however, remain liable for any failure of those measures. Again, these new reliance provisions reflect to an extent the approach to reliance which had been advocated in earlier versions of the JMLSG Guidance; in the context of syndicated loan arrangements the JMLSG Guidance has previously suggested (and continues to suggest) that Lenders could take account of, and may rely upon, the due diligence carried out on a Borrower by the Mandated Lead Arranger or the Agent.

**This document may be freely quoted with acknowledgement**

## **The Association of Corporate Treasurers**

The ACT is the international body for finance professionals working in treasury, risk and corporate finance. Through the ACT we come together as practitioners, technical experts and educators in a range of disciplines that underpin the financial security and prosperity of an organisation.

The ACT defines and promotes best practice in treasury and makes representations to government, regulators and standard setters.

We are also the world's leading examining body for treasury, providing benchmark qualifications and continuing development through education, training, conferences, and publications, including *The Treasurer* magazine.

Our 3,500 members work widely in companies of all sizes through industry, commerce and professional service firms.

For further information visit [www.treasurers.org](http://www.treasurers.org)

Guidelines about our approach to policy and technical matters are available at <http://www.treasurers.org/technical/resources/manifestoMay2007.pdf>

This update was prepared by Slaughter & May.

*This update is written in general terms and its application to specific situations will depend on the particular circumstances involved. In addition this briefing does not attempt to include all points arising from the Money Laundering Regulations 2007. Readers should therefore take professional advice. This briefing should not be relied upon as a substitute for this advice. Although the ACT and Slaughter and May have taken all reasonable care in the preparation of this briefing, no responsibility is accepted by the ACT or Slaughter and May for any loss, however caused, occasioned to any person by reliance on it.*

ACT  
51 Moorgate  
London EC2R 6BH, UK  
Telephone: +44 (0)20 7847 2540  
Fax: +44 (0)20 7374 8744  
Website: [www.treasurers.org](http://www.treasurers.org)