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0191 387 1110

MONEY LAUNDERING AND THE PROCEEDS OF CRIME

There are tough rules to crack down on money laundering and the proceeds of crime. These rules affect a wide range of people and 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 legislation, in the last decade, 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 RULES

The key pieces of legislation are:

- the Proceeds of Crime Act 2002 (The Act) as amended by the Serious Organised Crime and Police Act 2005, and
- the Money Laundering Regulations 2007 (The 2007 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.

THE 2007 REGULATIONS

The 2007 Regulations contain the detailed procedural requirements for those affected by the legislation. The 2007 Regulations came into force on 15 December 2007.

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 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
- financial institutions
- credit institutions
- dealers in high value goods (including auctioneers dealing in goods) whenever a transaction involves accepting a total cash payment equivalent to €15,000 or more, whether in a single operation or in several operations that are linked
- casinos
- estate agents
- some management consultancy services
- company formation agents
- insolvency practitioners
- legal professionals

THE IMPLICATIONS OF BEING IN THE REGULATED SECTOR

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

- apply customer due diligence procedures (see below)
- 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 2007 Regulations affect those with high value cash sales.

THE IMPLICATIONS FOR CUSTOMERS 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 - CUSTOMER DUE DILIGENCE (CDD)

Under The Regulations, if you operate in the regulated sector, you are required to undertake CDD procedures on your customers. These CDD procedures need to be undertaken for both new and existing customers.

CDD procedures involve:

- identifying your customer and verifying their identity. This is based on documents or information obtained from reliable and independent sources
- identifying where there is a beneficial owner who is not the customer. It is necessary for you to take adequate measures on a risk sensitive basis, to verify the beneficial owner's identity, so that you are satisfied that you know who the beneficial owner is. The beneficial owners of the business are those individuals who ultimately own or control the business
- obtaining information on the purpose and intended nature of the business relationship

You must apply CDD when you:

- establish a business relationship
- carry out an occasional transaction (one off transaction valued at €15,000 or more)
- suspect money laundering or terrorist financing
- doubt the reliability or adequacy of documents or information previously obtained for identification.

CDD measures must also be applied on a risk sensitive basis at other times to existing customers. This could include when a customer requires a different service. Businesses must consider why the customer requires the service, the identities of any other parties involved and any potential for money laundering.

The purpose of the CDD is to confirm the identity of the customer. For the customer's identity to be confirmed, independent and reliable information is required. Documents which give the strongest evidence are those issued by a Government department or agency or a Court including documents filed at Companies House. For individuals, documents from highly rated sources that contain photo identification, eg passports and photo driving licenses, as well as written details are a particularly strong source of verification.

The law requires the records obtained during the CDD to be maintained for five years after a customer relationship has ended.

ENHANCED DUE DILIGENCE

Enhanced CDD and ongoing monitoring must be applied where:

- the client has not been met face to face
- the client is a politically exposed person
- there is a higher risk of money laundering or terrorist financing.

Additional procedures are required over and above those applied for normal due diligence in these circumstances.

PROCEDURAL CHANGES - REPORTING

As mentioned above, the definition of money laundering includes 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 National Crime Agency (NCA).

The defences for the MLNO are:

- reasonable excuse (reasons such as duress and threats to safety might be accepted although there is little case law in this area as yet)
- they followed Treasury approved guidance.

The Courts must take such guidance into account.

NATIONAL CRIME AGENCY (NCA)

The NCA is the UK new crime-fighting agency with national and international reach and the mandate and powers to work in partnership with other law enforcement organisations to bring the full weight of the law to bear in cutting serious and organised crime. Part of the role of the NCA 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 the NCA. By acting as a coordinating body, the NCA 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 require businesses that deal in goods and accept cash equivalent to €15,000 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 the NCA.

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 £8,000, 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 the NCA.

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 a suspicious activity report had been made, say for example about a customer, to that customer. Where this disclosure would be likely to prejudice any investigation by the authorities, an offence may be committed. A tipping off offence may also be committed where a person in the regulated sector discloses that an investigation into allegations that a money laundering offence has been committed is being contemplated or carried out and again that this disclosure would be likely to prejudice that investigation. 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 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 2007 Regulations requires those affected to introduce a number of 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.

CALL US TODAY ON 0191 387 1110

WWW.BJSTRAUGHAN.CO.UK

EMAIL: CLS@BJSTRAUGHAN.CO.UK

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