

## Proceeds of Crime Act 2002; Terrorism Act 2000; Money Laundering Regulations 2007

### Guidance for Notaries

*These notes are a concise guide to the provisions of the Proceeds of Crime Act 2002 (POCA), the Money Laundering Regulations 2007 and the Terrorism Act 2000 as they affect notaries in England and Wales; they will be revised from time to time. The purpose of the notes is to assist notaries and their employees in understanding their duties under this important legislation. In the course of these notes reference will be made to specific guidance issued by other professional or industry bodies where these are considered relevant to particular issues arising in notarial practice. In view of the fact that many notaries also practise as solicitors, guidance issued from time to time by the Law Society of England and Wales is of particular relevance and it is contemplated that a solicitor - notary when carrying out legal work which has no special notarial aspect would do so as a solicitor and in accordance with guidelines applicable to that profession.*

#### **A RISK-BASED APPROACH**

Throughout this guidance emphasis will be placed on the benefits of a risk-based approach to money laundering and terrorism issues. A practice that takes a risk-based approach manages its affairs with regard to the risks of the practice being used for money laundering or terrorist financing and monitors the effectiveness of the controls it has put in place to manage these risks.

## Section 1 (Introduction)

### (i) Background

(a) Part 7 of the **Proceeds of Crime Act 2002**, consolidated, updated and reformed the criminal law in the United Kingdom with regard to money laundering. Other parts of the Act created the Assets Recovery Agency (ARA), consolidated existing laws on the confiscation of assets derived from criminal conduct, and introduced new powers to recover criminal assets through civil proceedings. Part III of the **Terrorism Act 2000** creates a number of offences in relation to terrorism and the funding of terrorism. The Money Laundering Regulations 2003 first required notaries to introduce systems and training to prevent money laundering and, except in the case of sole practitioners, designate a 'Nominated Officer' to whom suspicious transactions must be reported. The 2003 Regulations have now been replaced by the **Money Laundering Regulations 2007 ('the Regulations')** which implement in part Directive 2005/60/EC of the European Parliament and Council on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing ('the Directive'). In compliance with the Directive, the Regulations (r.23 and Schedule 3) designate the **Faculty Office of the Archbishop of Canterbury** ('the Faculty Office') as the supervisory authority for notaries in England and Wales. As supervisory authority for the purposes of the Regulations, the Faculty Office has the duty to monitor effectively English and Welsh notaries and take necessary measures to secure compliance by those notaries with the Regulations. In furtherance of that duty, the Master of the Faculties has made the **Notaries (Prevention of Money Laundering) Rules 2007** which among other things require every notary holding a practising certificate to familiarize himself with and have regard to this guidance in the conduct of his practice: failure to do so is notarial misconduct for the purposes of the **Public Notaries (Conduct and Discipline) Rules 1993**.

(b) The legislation is designed to prevent the proceeds of unlawful activities being legitimised by being applied to carry out apparently legitimate transactions. It takes a very wide definition of criminal conduct, including all conduct which constitutes an offence in any part of the United Kingdom, not just specific offences such as drug trafficking, terrorism and fraud. The definition also includes conduct which occurs overseas which would constitute an offence in the UK and thus includes tax evasion and the evasion of tax in jurisdictions outside the UK. In relation to certain categories of offences occurring overseas, the position has been altered by section 102 of the **Serious Organised Crime and Police Act 2005** which provides a new defence to the money laundering offences under POCA. The defence applies where a person knows or believes on reasonable grounds that the acts which produced the proceeds took place in a particular country overseas and the acts were lawful in that country. In accordance with the **Proceeds of Crime Act 2002 (Money Laundering: Exceptions to Overseas Conduct Defence) Order 2006 (SI 2006/1070)**, the defence applies only if the act generating the proceeds would not be punishable in the United Kingdom by a maximum sentence of more than 12 months' imprisonment. The Order sets out a few exceptions to this rule.

(c) There are also requirements for certain businesses and professions falling within the scope of the 'regulated sector' – this includes notaries – to report suspected money laundering to the authorities. It is important to note that the test of whether or not a transaction should be reported is an objective one – that is to say it depends not on whether the notary actually knows or suspects that money laundering is involved, but whether he had reasonable grounds for such knowledge or suspicion. There is not a *de minimis* limit associated with these provisions, and it is not relevant when the criminal conduct took place. Routine transactions may fall into this wide pool of business and may easily form part of a money laundering scheme.

(ii) **Circumstances in which a notary may be at risk of being used for money laundering**

(a) There are three acknowledged phases to money laundering:

- **Placement** – this occurs when cash generated from crime is initially placed in the financial system. As many crimes generate cash, this is the point at which the proceeds of crime are most apparent and at risk of detection. As banks and financial institutions have developed anti-money laundering procedures, criminals have to look for other ways of placing cash within the financial system. Entities which commonly deal with client money, such as law practices, have increasingly become at risk of being targeted to deal with cash. Practices should decide whether to operate a policy which limits the amount of cash they will accept (except for good reason), and explain that to clients. This policy should apply even where cash is tendered in payment of fees and disbursements. However, the placement stage may not always involve cash – it will depend on the nature of the predicate offence.
- **Layering** – after the proceeds of crime have been placed into the financial system, layering occurs when the money passes through a series of complex transactions in order to obscure the origin. These transactions often involve different entities, such as companies and trusts and can take place in multiple jurisdictions. Notary practices are at risk of being targeted to assist in money laundering at this stage, although detection can be more difficult.
- **Integration** – The criminal wishes to be able to use his funds without fear of detection and thus needs to integrate them into the financial system to give them the appearance of legitimacy. Once the origin of the funds has been obscured, the funds can reappear as legitimate funds or assets. At this stage the criminals will invest funds in legitimate businesses or other forms of investment. Legal professionals will often be used in this process, for example through buying a property, setting up a trust or acquiring a company. This is not an exhaustive list.

**Important note:**

Although the above describes the usual money laundering phases, note that the definition of money laundering offences in the Proceeds of Crime Act 2002 is much wider and extends to the passive "possession" of criminal property and arrangements which facilitate the acquisition, retention use or control of criminal property by or on behalf of another person.

(b) Notaries are potentially at risk of carrying out money laundering on behalf of clients in many common areas of work. Great care therefore needs to be taken when accepting and following instructions, particularly when these cover both the receipt and disbursement of client monies. Notaries should always be conscious of the real benefits to money launderers of having funds passed through a notary's client bank account on the way to the next level. Particular care should be paid to any last minute change of instructions, unusual or unnecessary arrangements or the use of third party names in connection with normal commercial arrangements. More generally, the addition to a document of a notary's signature and seal (even if he is only witnessing a signature) may lend an appearance of legitimacy to a fraudulent transaction.

(c) Notaries should also be aware of certain asset-freezing financial sanctions and financial restrictions imposed on persons and entities designated under United Nations resolutions, EC Regulations or domestic legislation. Where such restrictions exist, it is unlawful to deal with the funds or other assets of such persons or entities or make payments to them. HM Treasury has compiled a consolidated list of persons and entities subject to these restrictions; further information on the list and the financial restrictions regime in general will be found in section 10 below.

## Section 2 (The Proceeds of Crime Act 2002)

The Act established three sets of money laundering offences:-

- the 'Principal' offences
  - Concealing etc.(section 327)
  - Arrangements (section 328)
  - Acquisition, use and possession (section 329).

A notary who knows or suspects or has 'reasonable grounds' for suspecting that a person has committed any of these offences must make a disclosure as soon as is practicable to the **Serious Organised Crime Agency (SOCA)**. Where disclosure is made before a transaction likely to give rise to a money laundering offence has taken place, the transaction must not proceed until SOCA has given its consent.

In practical terms, this means that a notary who, when asked to attest a document, suspects that in doing so he will become concerned in an arrangement which he knows or suspects will facilitate the acquisition, retention or use of criminal property, he will commit an offence under section 328 unless he first obtains consent from SOCA - this is the case even though such attestation may not be 'Relevant Business' for the purposes of the Regulations.

- 'failure to disclose' offences
  - Failure to disclose: regulated sector (section 330)
  - Failure to disclose: nominated officers in the regulated sector (section 331)
  - Failure to disclose: other nominated officers (section 332).
- 'Tipping off' offences
  - Tipping off: regulated sector (section 333A, inserted by the Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (SI 2007/3398)) (attached in Schedule 2). Note that sections 333B to 333D inserted by the same Regulations set out a number of exceptions to the tipping off offence, including disclosures in certain circumstances by one professional adviser to another
  - Offences of prejudicing an investigation (section 342).

Being familiar with terms of these sections is important. A person guilty of one of the 'principal' offences is liable to a maximum prison sentence of 14 years and/or a fine, while the other offences carry a penalty of up to 5 years imprisonment and/or a fine.

For further information on this important legislation, please refer to Section 5 of these guidance notes and Part 7 of the Act itself (attached as Schedule 2).

**Section 3 (Terrorism Act 2000 as amended by the Anti-terrorism, Crime and Security Act 2001)**

The offences created by Part III of this Act (relevant sections of which are reproduced in Schedule 3 together with the **Terrorism Act 2000 (Business in the Regulated Sector and Supervisory Authorities) Order 2003** (SI 2003/3076)) include:

- **fund-raising (section 15)**
- **use and possession of money or other property for the purposes of terrorism (section 16)**
- **funding arrangements (section 17)**
- **laundering of terrorist property (section 18)**

A notary who knows or suspects or has 'reasonable grounds' for suspecting that a person has committed, or attempted to commit, any of these offences must make a disclosure as soon as is practicable. The disclosure procedure is the same as that applying under the Proceeds of Crime Act 2002 (see section 5 below).

- **tipping off: regulated sector (section 21D as inserted by Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 (SI 2007/3398)) (attached in Schedule 2).**

## Section 4 (The Money Laundering Regulations 2007)

The Regulations, which came into force on 15 December 2007, apply to notaries when they participate in financial and real property transactions by assisting in the planning or execution of a transaction or otherwise acting on behalf of a client in the transaction. The transactions to which the Regulations apply are those specified in Regulation 3(9), and include transactions concerning the buying and selling of real property and business entities, the managing of client funds and the creation, operation or management of trusts, companies or similar structures. Individual notaries or firms of notaries may also undertake other activities covered by the Regulations, for example as trust or company service providers (r. 3(10)). Services of the nature mentioned above will be termed '**Relevant Business**' for the purposes of these guidance notes. It is important to note that the Regulations extend only to Relevant Business and many aspects of a notary's practice (such as the taking of affidavits and declarations, protests, translating, certifying the execution of documents and authentication work in general) will not be affected; accordingly, the Regulations do not apply to work undertaken by the notary as a public certifying officer where he has no substantive role in the underlying transaction. In respect of Relevant Business notaries will be subject not only to the Practice Rules and other rules made from time to time by the Faculty Office, but also the obligations imposed by the Regulations.

The Regulations require notaries to establish and maintain policies and procedures to prevent money laundering and give training to relevant employees in how to recognize and deal with transactions and other activities which may be related to money laundering or terrorist financing. These policies and procedures include:

### (i) Customer due diligence (Part 2 of the Regulations)

(a) For the purposes of the Regulations 'customer due diligence' means (r.5) –

- identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
- 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 notary 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.

(b) Proper notarial practice already requires notaries to verify the identity of parties to instruments which they authenticate; as a minimum, this involves inspection of the original passport or other official identity document of each signatory to the instrument. Identifying your client is now even more important in terms of the Regulations.

(c) The customer due diligence requirements under the Regulations apply in the following circumstances (r. 7(1)):

- to 'occasional' transactions which involve an amount of €15,000 (currently approximately £9,000) or more, and to any transactions which appear to be linked with others where the aggregate of the amounts involved is in excess of € 15,000;
- if you suspect that your client is engaged in money laundering or terrorist funding, or that a transaction is being carried out on behalf of someone else who is engaged in money laundering or terrorist funding;
- in every case where the practice forms or resolves to form a business relationship
- if you doubt the veracity or adequacy of documents, data or information obtained for the purposes of identification or verification.

The terms 'business relationship' and 'occasional transaction' are defined in the Regulations (r.2 (1)).

(d) The notary must determine the extent of customer due diligence measures on a **risk-sensitive basis**; these will depend on the type of customer and the nature of the transaction. In any event, the notary must, if required, be able to demonstrate to the Faculty Office that the extent of the customer due diligence measures which he has taken is appropriate in the light of the risks of money laundering and terrorist financing.

(e) Identification, in the case of an individual, has a number of aspects, for example, name, date of birth, place of birth, address, occupation, appearance and so on. Practices have to decide what pieces of information to verify although as a minimum this should include the full name of the client and EITHER his date and place of birth OR his current address.

In all cases, the evidence obtained must establish to the notary's satisfaction that the client is the person he claims to be. Examples of satisfactory evidence of identity are given in paragraph 5.8 of these guidance notes and Section 7. For more detailed information about types of evidence that customers might use to prove they are who they say they are, reference may be had to Part II (in particular Sector 1, Annex 1 I) of the *Guidance for the UK Financial Sector* published by the Joint Money Laundering Steering Group (JMLSG) [www.jmlsg.org.uk](http://www.jmlsg.org.uk) in December 2007.

(f) In cases where the beneficial owner is a person other than the client, the Regulations require the notary to take adequate measures on a risk-sensitive basis to establish the identity of that other person. For example, where a notary is instructed by a person appointed under a power of attorney, that person (the donee) is the client and the donor is the beneficial owner; accordingly the identity of both donee and donor needs to be verified (including cases where the donor has lost capacity and the donee is acting under an enduring or lasting power of attorney). The meaning of 'beneficial owner' in the case of bodies corporate, trusts and other legal arrangements and circumstances is provided in the Regulations (r.6).

(g) Accordingly, depending upon the notary's assessment of the money laundering risk inherent in a particular transaction or activity, he may need to make much broader enquiries of his client and his affairs than merely establishing his identity – such additional information collected in respect of a client is an essential tool in managing the money laundering risk. However, the nature of notarial work is such that the notary will often have less opportunity to obtain this information than other legal professionals: notaries need to be aware that this factor increases the risk that they may unwittingly become involved in money laundering activity.

(h) The JMLSG *Guidance for the UK Financial Sector* referred to above identifies two broad reasons why practices need to undertake customer due diligence (Part I, para. 5.1.12):

- to help the practice, at the time due diligence is carried out, to be reasonably certain that customers are who they say they are, to know whether they are acting on behalf of another and that there is no legal barrier... to providing them with the product or service requested;
- to enable the practice to assist law enforcement, by providing available information on customers or activities being investigated.

(i) Where a business relationship is to be established, the Regulations require (r.5(c)) the notary to obtain information on the purpose and intended nature of the business relationship.

(j) As a general rule, a notary must verify the identity of the client (and any beneficial owner) before establishing a business relationship or carrying out a transaction (r.9(2)); this of course accords with general notarial practice. Where a business relationship is established, the notary must conduct **ongoing monitoring** of that relationship (r.8(1)): this will include a scrutiny of transactions undertaken – including where appropriate the source of funds – thus enabling the notary to detect any activity which appears unusual in the light of his knowledge of the client, his business and risk profile. The notary must also keep up-to-date documents, data and information obtained for customer due diligence purposes.

(k) If the notary is unable to apply due diligence measures in relation to a client, he should not proceed with the transaction or establish a business relationship; he should also consider whether he needs to make a disclosure to the Serious Organised Crime Agency (SOCA) (r.11, and in respect of the procedure for disclosure see below paras. 5.15 *et seq.*).

(l) Customer due diligence measures are to be applied not only at the commencement of a business relationship, but also to existing clients at other 'relevant times' (r.7(3)). It is for the notary to determine the timing and extent of those measures on a risk-sensitive basis and these will extend to persons who were clients of the notary before the Regulations came into force on 15 December 2007.

(m) Simplified due diligence (r.13)

In the case of certain categories of clients, notaries are not required to undertake client identification (r.5.4) – these include banks and other financial institutions situated in the UK or EEA (or in non-EEA states which impose requirements equivalent to those laid down in the

money laundering directive and are supervised for compliance with those requirements), companies listed on a regulated market and UK public authorities. This is known as **simplified due diligence**, but the exemption does not extend to ongoing monitoring of a business relationship or cases where the notary knows or suspects terrorist financing or money laundering.

(n) Enhanced customer due diligence (r.14)

In certain circumstances where there is a higher risk of terrorist financing or money laundering, the notary may need to apply customer due diligence going beyond the standard evidence of identity and level of monitoring - this is known as **enhanced customer due diligence** and **enhanced ongoing monitoring** and is to be applied on a risk-sensitive basis.

Circumstances in which this would arise include

- cases where the client is not physically present for identification purposes. In such cases the notary must take steps to compensate for the higher risk inherent in such situations by requesting additional documents or taking additional steps to verify the authenticity of those documents;
- dealings with **politically exposed persons** – these include individuals (and their immediate family members and known close associates) who have been entrusted by states other than the UK, or by EC institutions and international bodies, with prominent public functions. Schedule 2 of the Regulations contains a non-exhaustive list of such persons which include heads of state, ministers, members of parliament, ambassadors etc. In such cases ‘senior management approval’ must be obtained before establishing a business relationship and adequate measures taken to establish the source of wealth and source of funds involved in the relationship or transaction and conduct enhanced ongoing monitoring;
- Any other situation presenting a higher risk of money laundering or terrorist financing.

(o) Reliance on third parties (r.17)

A notary may rely on certain categories of third parties to apply customer due diligence measures (provided that such a third party consents to being relied upon) although the notary remains liable for any failure by a third party to apply those measures. Such third parties include:

**In the UK**

FSA authorized credit or financial institutions;

Independent legal professionals, auditors, insolvency practitioners, external accountants and tax advisers supervised for the purposes of the Regulations by one of the bodies listed in Part I of Schedule 3 of the Regulations (this includes solicitors, barristers and licensed conveyancers, but not English and Welsh notaries);

If the institutions or persons consent to being relied on, they must, if requested by the notary, make immediately available to the notary any information about the client (and any beneficial owner) which they obtained when applying customer due diligence measures and immediately forward to the notary relevant copies of any identification and verification data and other relevant documents on the identity of the client or beneficial owner which they obtained when applying those measures.

#### **In other EEA states**

Notaries, other independent legal professionals, credit or financial institutions, auditors, insolvency practitioners, external accountants and tax advisers who are subject to mandatory professional registration recognized by law and are supervised for compliance with the money laundering directive.

#### **In non-EEA states**

Notaries, other independent legal professionals, credit or financial institutions (or equivalent), auditors, insolvency practitioners, external accountants and tax advisers who are subject to mandatory professional registration recognized by law, to requirements equivalent to those laid down in the money laundering directive and are supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter V of the directive.

The notary relying on third parties outside the UK must take steps to ensure that they will make available on request the information and documents mentioned above in the case of third parties based in the UK.

A notary may of course use outsourcing service providers or agents to carry out customer due diligence; however, the notary remains responsible for the failure of any such outsourcing provider or agent properly to carry out that due diligence.

When relying on third parties, it is recommended that the notary obtain written confirmation of the customer due diligence measures applied (including an undertaking to supply on request the information and documents obtained by the third party in the course of that process). Schedule 4 to this guidance contains pro forma confirmations which may be used or adapted as necessary. The third party's consent to being relied upon may be written or oral, express or inferred from conduct (see JMLSG Guidance, Part I, paras. 5.6.7 *et seq.*).

#### **(ii) Record Keeping Procedures (Part 3 of the Regulations)**

(a) The Notaries Practice Rules 2001 already require notaries to keep records sufficient to identify 'the person or persons ... intervening in a notarial act and the method of identification of the party or parties so intervening'. The Regulations go further by requiring that copies of - or references to - the evidence of identity produced be retained by the notary, a practice which many notaries already in fact follow. They also require the notary to maintain records (consisting of the original documents or copies) in respect of the business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring.

(b) Records of identity must be kept for at least five years:

- where a business relationship has been formed, from the date on which the relationship ends. (See paragraph (i) above for the definition of 'business relationship');
- In the case of an occasional transaction, the date of completion of that transaction.

(c) Other records must be kept for at least 5 years commencing, where they relate to a particular transaction, with the date on which the transaction was completed, or in other cases when the business relationship ends. In most cases, keeping a copy of the client file and the accounting records for this period should satisfy this requirement. This is of course without prejudice to the notary's obligations under the Notaries Practice Rules and any other statutory or regulatory requirements relating to the keeping of records.

### **(iii) Policies and Procedures (Regulation 20)**

(a) With a view to preventing activities related to money laundering and terrorist financing, practices must establish and maintain appropriate and risk-sensitive policies and procedures relating to :

- customer due diligence measures and ongoing monitoring;
- reporting;
- record-keeping;
- internal control;
- risk assessment and management;
- the monitoring and management of compliance with, and the internal communication of, such policies and procedures.

These must include policies and procedures which enable the identification of complex or unusually large transactions or unusual patterns of transactions having no apparent economic or visible lawful purpose and other activities likely to be related to money laundering or terrorist financing, and for the identification of politically exposed persons.

At the beginning of this Guidance the need was emphasised for practices to adopt a risk-based approach in establishing and maintaining anti-money laundering policies and procedures. A risk-based approach takes a number of discrete steps in assessing the most cost effective and proportionate way to manage and mitigate the money laundering and terrorist financing risks faced by the practice. These steps are to identify the money laundering and terrorist financing risks that are relevant to the practice; assess the risks presented by the practice's particular clients, specialisms and location; design and implement controls to manage and mitigate these assessed risks; monitor and improve the

effective operation of these controls and to record appropriately what has been done and why.

How a risk-based approach is implemented will also depend on a practice's size and structure. Different considerations will apply to a sole practitioner in a rural practice than to a multi-partner firm with an inner-city location. A risk-based approach starts with the identification and assessment of the risk that has to be managed. A practice should assess its risks in the context of how it might most likely be involved in money laundering or terrorist financing. Once a practice has identified and assessed the risks it faces in respect of money laundering or terrorist financing, it must ensure that procedures to manage and mitigate these risks are designed and implemented.

(b) As part of these policies and procedures, practices must designate a **Nominated Officer** to whom anyone in the practice handling relevant business who knows or suspects, or has reasonable grounds to know or suspect, that a transaction involves money laundering must report. Failure to report in such circumstances is a criminal offence for the purposes of the Proceeds of Crime Act 2002, section 330.

The function of the Nominated Officer should be fulfilled by a partner in the practice or a senior employee with sufficient authority, responsibility and experience to obtain all relevant information. It then will be the responsibility of the Nominated Officer to consider that report and if appropriate make a formal report to the **Serious Organised Crime Agency (SOCA)**. A Nominated Officer will commit an offence if, as a result of a disclosure received by him under section 330, he knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering and fails to report as soon as practicable to SOCA.

A sole practitioner, who does not employ or act in association with anyone else, does not have to maintain internal reporting procedures under Regulation 20, nor appoint a Nominated Officer. However, other parts of the Regulations and the money laundering criminal law still apply and the sole practitioner must report to SOCA if he or she knows or suspects money laundering, or has reasonable grounds for suspicion.

#### (iv) Training (Regulation 21)

Appropriate employees, in particular any who conduct Relevant Business on behalf of the practice, must be made aware of the law relating to money laundering and terrorist financing - this would include the provisions of the **Regulations**, Part 7 of the **Proceeds of Crime Act 2002** (attached as Schedule 2 together with the **Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2003**, the **Proceeds of Crime Act 2002 (Money Laundering: Exceptions to Overseas Conduct Defence) Order 2006** and the **Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007**) and sections 18 and 21A of the **Terrorism Act 2000** (attached as Schedule 3 together with the **Terrorism Act 2000 (Business in the Regulated Sector and Supervisory Authorities) Order 2003**). Furthermore, such employees must be given training in how to recognise and deal with transactions which may be related to money laundering. It is the responsibility of individual practices to determine how and to whom that training is to be

given, and how often it is to be repeated, for example by requiring staff to attend seminars or undertake self-teach courses, or a combination of both. Practices will also need to decide the level of training appropriate to different categories of staff.

## Section 5 (Answers to common questions)

### General

#### 5.1 Can you give any help regarding the categories of work where the Money Laundering Regulations will apply?

See Section 1, paragraph (ii). Note also the wide definition of 'trust or company service provider' in Regulation 3(10) which extends not only to company formation and the provision of nominee directors and officers, but also to the provision of registered office, business address, correspondence or administrative address. However, it is not considered that by agreeing to act merely as agent for the service of legal process of an overseas party to, for example, a loan agreement a notary falls within that definition.

#### 5.2 Are there any particular circumstances in which a Notary might be at risk of being used for money laundering or terrorist funding?

See section 1, paragraph (ii). Additionally, the following general comments may be helpful although the examples given do not purport to be exhaustive:

*a. Sale and purchase of real estate, ships and other major assets.*

In both purchase and sale transactions, proper identification must be undertaken of clients and enquiry made as to the source of incoming funds; that source may need to be investigated, particularly if the funds are received otherwise than from the identified client's own bank account or a recognized financial institution. Any changes to a funding arrangement, particularly when carried out without reasonable explanation and close to the settlement date require to be considered, particularly if funds are being introduced from a third party.

Purchasing an asset in a nominee name for the benefit of an undisclosed principal also requires to be considered carefully to ensure you have properly identified the beneficial owner and satisfied yourself that the source of funds is legitimate.

Ownership of real estate is a very desirable target for money launderers. Setting up a number of unnecessary steps in creating final ownership or holding the title in a corporate vehicle is a popular device employed by criminals and professional money launderers.

The simple step of providing funds as a deposit for a substantial conveyancing transaction or on account of fees and disbursements for future work, then cancelling the project and seeking recovery of the funds to the originator or a third party's nominated account is another popular device to use legal professionals to achieve the money launderer's ends.

*b. Trusts and Offshore Investment vehicles; unusual business structures.*

The creation of specialist trusts or other corporate structures sometimes in an offshore jurisdiction, in such a way as to obscure the true beneficial ownership of funds or assets is also a popular target for money launderers. However, industry norms must be taken into account: for example, in the shipping industry complex corporate structures (often involving offshore companies) are widespread and – although care should be taken to identify the vessel

managers or ultimate owners - their use in this context may not by itself be a reason for undue suspicion.

Particular care should be taken in dealing with monies which are being placed offshore as part of a tax planning regime. Tax avoidance is legitimate, but tax evasion constitutes a criminal offence and would amount to money laundering for the purposes of the Proceeds of Crime Act 2002.

**Note: Tax avoidance** is the legal utilisation of the tax regime to one's own advantage, in order to reduce the amount of tax that is payable by means that are within the law. Examples of tax avoidance involve using tax deductions or changing one's tax status through incorporation; depending on the legal regime applicable to the tax payer, it might even extend to establishing an offshore company, trust or foundation in a tax haven. By contrast **tax evasion** is the general term for efforts by individuals, firms, trusts and other entities to evade the payment of taxes by illegal means. Tax evasion usually entails taxpayers deliberately misrepresenting or concealing the true state of their affairs to the tax authorities to reduce their tax liability, and includes, in particular, dishonest tax reporting (such as under declaring income, profits or gains; or overstating deductions).

Generally, the notary should be wary of business structures which appear abnormal, unduly complicated or are outside his professional experience; in the latter case he should decline to act.

c. *Probate.*

Although this is much less likely to be an area of concern, money laundering issues may arise. Unusual instructions from beneficiaries or legatees regarding the payment of funds to their order should be reviewed, particularly if the sums are in any way substantial. There may also be tax issues, for example where the deceased under-declared his income during his lifetime. Also, it may become apparent during the winding-up of an estate that certain assets represent the proceeds of acquisitive crimes committed by the deceased. As was mentioned in paragraph 1(i) for the purposes of the anti-money laundering regime it is irrelevant how long ago the criminal conduct took place.

d. *Management of client money, securities and other assets: opening or management of bank, savings or securities accounts.*

These activities, although unlikely to have any relevance to ordinary notarial practice, are specifically covered by the Regulations and must always be handled with particular care.

### 5.3 What checks should be made on client funding?

Where you are substantively involved in the planning or execution of a transaction, it is recommended that you take appropriate steps to check the source of funds.

### 5.4 How do I go about checking the source of a client's funds?

There is a simple flowchart attached to these notes under section 8. Use it to help your checking system. Extra enquiries are needed if the funds are provided in cash, bank drafts or third party cheques. Be alert to last minute changes to the source of funds – this is a common ploy used by money launderers.

### **5.5 Is it ever safe to accept cash?**

Yes – if you are told at the start about cash being used by the client and you have made reasonable enquiries about the reasons why the client is using cash and its source. However, you may wish to establish a policy limiting the amount which you will accept. Record the explanations and your reasons for being satisfied in the particular circumstances.

### **5.6 How can I minimise the risk of assisting in the carrying out of a transaction involving money-laundering?**

Knowing your customer, understanding and complying with the requirements of the Proceeds of Crime Act 2002 and the Regulations is the surest recipe for minimizing the risk. Additionally, you should make a full note of your enquiries and answers in connection with client identification and (where relevant) source of funds and of course keep copies of relevant documents. Ask all the relevant questions at the earliest stage of any transaction. If you are instructed by an existing client after some years without contact, recheck the whole position. If you receive regular instructions from the same client, consider whether there is any pattern to these instructions which might give rise to suspicion, particularly if you are not sure of the underlying background. Be sure to enquire as to the client's general financial background, and specifically check the intended source of funds to be produced later in the transaction. Emphasise the fact that changes late in the day may affect your ability to proceed with the matter. Include a reference to this in your terms of business letter.

You should also make a note of any concerns which you may have raised at the time and fully record the client's response. This record is important to you and may in fact become very significant at a much later date in circumstances where criminal investigations are being carried out or you have to satisfy a court that you acted reasonably in not making a disclosure. Your notes should state any reasons why no disclosure was made.

### **Verifying identity**

#### **5.7 Do I have to identify clients?**

Yes. Refer to section 4 paragraph (i) above. Quite apart from your obligations under the Practice Rules, if, when carrying out Relevant Business (see section 4 above), satisfactory evidence of the identity of new clients in compliance with the Regulations is not obtained you must not proceed with the transaction, activity or business relationship. Note that customer due diligence should be applied not only at the commencement of a business relationship, but also at other appropriate times depending upon the risks inherent in the relationship or particular transactions carried out in the context of that relationship; this would include verifying the identity of existing clients.

#### **5.8 When is evidence of identity satisfactory?**

When it is reasonably capable of establishing that the client is the person he claims to be; and when the person who obtains the evidence is satisfied, in accordance with the procedures maintained under the Regulations, that the evidence does establish that the client is the person he claims to be.

For *individual clients* it is suggested that, for the purposes of the Regulations, you obtain evidence showing: -

- physical appearance (i.e. photographic evidence)
- the true name and/or names used
- EITHER the date and place of birth

OR current permanent address, including postcode.

Documents appropriate to evidence physical appearance, full names and date of birth might include the following:

- a document from an official source which has a photograph of the applicant, e.g. a current valid full passport or national identity card or new style driver's licence.

The following are examples of documentary evidence of address:

- confirmation from an electoral register search that a person of that name lives at that address;
- a credit reference agency search;
- an original recent electricity, gas, telephone, council tax bill or bank statement.

Note: documents differ in their integrity, reliability and independence – for example greater reliance may be placed on a document issued by a government department (such as a passport or driver's licence) than by a private organization such as a utility provider. For detailed advice on this point, consult Chapter 5 (paras.5.3.68 *et seq.*) of Part I of **Guidance for the UK Financial Sector** published in December 2007 by the Joint Money Laundering Steering Group.

#### For *corporate clients*

No specific steps are needed if clients are a credit or financial institution or a company listed on a regulated market (or a subsidiary of a listed company) fulfilling in either case the criteria in Regulation 13, in which case simplified due diligence applies (see Section 4, paragraph (i)(m) above), although the notary will need to be satisfied that the individual appearing does in fact represent that company;

Steps are needed if clients are an unquoted company or a partnership, in which case, in addition to ascertaining the names of the directors or partners, the notary should identify the

beneficial owner. In the case of a company, 'beneficial owner' means any individual who ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the company or otherwise exercises control over the management of the company. In the case of a partnership, the 'beneficial owner' is any individual who is entitled to or controls (directly or indirectly) more than a 25% share in the capital or profits or more than 5% of the voting rights in the partnership. In these cases the notary needs to take adequate measures on a risk-sensitive basis to verify the identity of the beneficial owner so that he is satisfied who the beneficial owner is; the notary should also take steps to understand the ownership and control structure of the company or partnership.

You should also verify the existence of a company by obtaining copies of:-

- certificate of incorporation/certificate of trade/goodstanding certificate or equivalent;
- and perhaps, for companies, their latest report and accounts (audited where applicable).

Where appropriate, the above information may be obtained by an on-line search of the relevant companies' registry. Note, however, in the case of companies incorporated in England and Wales, that Companies House rarely checks the information supplied to it; accordingly the filed records of directors, shareholders etc. must be treated with caution.

The Regulations require the retention of copies of the evidence which you obtain to identify your client or references to that evidence; this goes somewhat beyond the record-keeping provisions of the Notaries Practice Rules 2001 which require the notary to maintain records 'sufficient to identify...the method of identification of the party or parties intervening in the notarial act ...', but fall short of requiring retention of copies of the identification documents. For more detailed information on documents appropriate for identifying clients reference may be had to Chapter 5 (paras.5.3.68 *et seq.*) of Part I of the *JMSLG Guidance for the UK Financial Sector* referred to in section 4(i)(h) above. However, notaries should always bear in mind that the key to effective compliance with the legislation is risk assessment and risk management. Accordingly, subject to compliance with the Practice Rules, a common sense risk-based approach should be applied to determining the extent of identification requirements in particular cases. See also the check-list in Section 7 below.

#### **5.9 How do I go about deciding if I need to comply with the Regulations and also in identifying new clients - particularly when all I am doing is authenticating a power of attorney or other document?**

Where your role is limited to the authentication of documents (including certifying their execution) which form part of a transaction in whose execution or planning you are not otherwise involved the Regulations do not apply; however, this does not affect your obligations as a notary to identify your client in accordance with proper notarial practice. Where the Regulations do apply, the notary's obligation is to satisfy himself as to the identity of the client and, if the client acts in a representative capacity, take reasonable steps to establish the existence of the person or entity whom the client represents. For this purpose,

the principal's existence might be established by, for example, production of a notarized power of attorney or other written authority, a search of the relevant companies register, a letter of introduction or written assurance from a law practice or other regulated body, or by the notary contacting the principal. If in doubt there is a Verification of Identity Flowchart and an Evidence of Identity Form at sections 6 and 7.

Most notarial business is by its nature conducted on a face-to-face basis. In cases where a client is not physically present, additional considerations apply. The *JMLSG Guidance for the UK Financial Sector* (Part I, paras. 5.5.10 *et seq.*) referred to in Section 4(i)(h) above is a useful reference for managing the risks inherent in such circumstances.

The record-keeping requirements under the Regulations must of course be complied with.

### **Record Keeping**

#### **5.10 What records do I have to keep and for how long?**

See section 4(ii) above. Remember that different periods apply under the Accounts etc and Practice Rules.

#### **5.11 Does the Proceeds of Crime Act 2002 affect the records I need to keep?**

Yes. The Act creates specific powers to allow an investigation of your client accounts, files and records. It is important to keep detailed records including notes of meetings and telephone calls. An examination of these records will expect to find explanations or evidence which demonstrates your reasonable enquiries made of the client at the appropriate time.

For further advice on this, see paragraph 5.6 above.

### **Grounds for suspicion**

#### **5.12 What should I be looking out for as suspicious circumstances?**

Financial position, other business interests, property ownership are all important, i.e. more than just the specific business being brought to you. Local knowledge is important – the client may already have a dubious reputation.

Suspicion has been defined in the case of *R v. Da Silva* [2006] EWCA Crim 1654 as 'thinking that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice'.

#### **WARNING SIGNS –**

- An address c/o a third party;
- Delays in providing ID documents;
- Mobile phone line as only contact;
- No contact address;

- No clear business purpose for the activity proposed;
- Unlikely proposal from the individual in front of you;
- Evasive answers or a failure to answer your questions;
- Delays in producing funds;
- Switching the source of funds e.g. producing a bank draft instead of a personal cheque;
- Unusual destination of funds or destination different from that expected;
- Destination of funds is a country or territory identified by FATF to have a weak anti-money laundering/combating the finance of terrorism (AML/CFT) regime (see Section 9 below);
- Being asked to hold substantial funds without a clear purpose;
- Being asked to attest a document for a client who is in prison, either having been convicted or being on remand;
- Being asked to issue the client funds for a different purpose than that originally sought— such as buying expensive cars, boats or other luxury items which do not need a notary to be involved in the normal course of business;
- Being asked to participate in creating tax planning structures where tax evasion may be a factor.

**N.B. The above list is not exhaustive.**

### **5.13 Any other advice about what constitutes suspicious activity which should be reported to the Nominated Officer?**

Know your clients and always take time to look at the big picture. You need to do more than tick boxes. In taking on new work or a new client it is best practice to get adequate information concerning income streams – employment, businesses or investment vehicles. Sudden affluence on the part of an existing client may warrant enquiry. Carrying out these checks will help to understand your clients' needs and type of legal/financial services which are likely to be required – this makes good business sense as well as minimizing the money laundering risk. If the client is an established businessman or woman, be sure to check as to other legal professionals who are also retained by the client. All these enquiries are meant to help you to understand your client and their legal needs. It will allow you to advise them properly. It may also help with any concerns leading to suspicions which may arise during the transactions. Detailed enquiries made at the early stages may provide the answers to concerns or suspicions of money laundering which develop at a later stage. If you have any cause for concern, review the file and report to the Nominated Officer (or directly to SOCA if you are a sole practitioner).

Information about foreign jurisdictions with high risk assessments as identified by the Financial Action Tax Force can be found on the following web-site: [www.fatf-gafi.org](http://www.fatf-gafi.org) . Further information on FATF is given in section 9 below.

**5.14 What should I do if I receive funds from a suspicious source where I might be deemed to 'know' that the money belongs to a third party other than my client?**

This raises the prospect of a constructive trust being created. This is a complex area of civil law, and creates a risk of your becoming in breach of trust by handling the funds in a manner which is detrimental to the rights of the original owner. A suspicion about funds arising from a fraud or other criminal activity will result in having to consider the question of whether to continue with the arrangement. If you find yourself in such circumstances or in any case where you are unsure of your position under the Proceeds of Crime Act, take advice from a suitably experienced solicitor, particularly on the need to obtain appropriate consent from SOCA (see para. 5.19) below.

**Disclosures**

**5.15 Do I have to have a Nominated Officer?**

Yes, unless you are doing no Relevant Business or are a sole practitioner who does not employ or act in association with another person.

**5.16 What do I have to tell the Nominated Officer?**

As explained above, the Proceeds of Crime Act 2002 introduced a range of offences, including that of failure to disclose knowledge or suspicion of money laundering. Any information or other matter which comes to your attention in the course of handling Relevant Business, as a result of which you know or suspect or have reasonable grounds for suspecting that a person is engaged in money laundering, should be reported to your Nominated Officer.

'Reasonable grounds' are a matter only a court can determine, but it seems clear that the following circumstances will not give rise to a defence to a charge of failure to disclose:-

- Turning a blind eye to the obvious
- Recklessly failing to make enquiries
- Negligently failing to assess the facts.

**Note** – The assessment is made by reference to the information available at the time, the individual's experience and awareness, actions and inquiries, training given and comparison to a peer group, "the reasonably competent notary". It is therefore important to take all reasonable steps to know your client's business circumstances and understand the underlying reasons for the transactions. In this connection, it may be helpful to refer to guidance issued by other legal professional bodies, and in particular you are referred to Chapter 8 of the anti-money laundering practice note of 22 February 2008 issued to solicitors by the Law Society of England and Wales [www.lawsociety.org.uk](http://www.lawsociety.org.uk).

If you disclose your suspicions to your Nominated Officer and record the fact that is your responsibility concluded. The Nominated Officer has to consider the whole position and disclose the position or not to SOCA, according to the situation. You must not proceed with the transaction without the consent of the Nominated Officer.

If you are a sole practitioner you must report directly to SOCA.

DO NOT TELL ANYONE OTHER THAN THE NOMINATED OFFICER THAT YOU HAVE MADE A REPORT OR DISCUSS MAKING A REPORT WITH YOUR CLIENT. Tipping off is an offence under the Proceeds of Crime Act 2002, section 333A. Refer to paragraph 5.22 below. Note that there are exceptions under POCA sections 333A and 342 to the tipping off offences which apply to "professional legal advisers". These exceptions are covered in detail in the anti-money laundering practice note of 22 February 2008 issued by the Law Society of England Wales [www.lawsociety.org.uk](http://www.lawsociety.org.uk) (see Chapter 5.8), but notaries should be wary of relying on these exceptions since their role will often be that of independent certifying officers rather than of legal advisers.

#### **5.17 What does the Nominated Officer have to do?**

Consider all such reports and any other relevant information and decide if this gives rise to a knowledge or suspicion of money laundering or reasonable grounds for such knowledge or suspicion. If so pass that information to SOCA. Keep a record of what he/she decides to do and why. Copies of reports submitted and notes of any contacts with SOCA should of course be kept.

#### **5.18 How should a disclosure to SOCA be made?**

Although no reporting format is currently prescribed, SOCA's preferred method is for reporters to submit their suspicions on the SOCA Suspicious Activity Report (SAR) Format. The form can be downloaded from the SOCA website [www.soca.gov.uk](http://www.soca.gov.uk) where advice on its completion will be found. SOCA prefers reports (including consent requests) to be submitted electronically via the internet-based SAR reporting mechanism 'SAR Online' which has been established on the SOCA web-site.

SAR Online was constructed in consultation with SARs reporters and aims to provide a range of benefits to the reporting sectors, including:

- Effective and secure web-based electronic reporting
- On-line user groups to facilitate information-sharing
- Ability to save work in progress for up to 28 days

- Capacity to store copies of reports submitted locally
- Speedy acknowledgment of submissions.

Alternatively, reports may be submitted by fax or post, but neither of these methods is encouraged.

In urgent consent cases, telephone or fax the SOCA duty officer, but note that SOCA is unable to give legal advice.

Telephone Number: **020 7238 8282**

Fax Number: **020 7238 8286**

### **5.19 When should the disclosure be made?**

Disclosure should be made as soon as practicable after the information on which your knowledge or suspicion that another person is engaged in money laundering comes to you. When disclosure is made before a 'prohibited act' takes place, this forms a request for consent to do a prohibited act. Consent is covered in more detail in paragraph 5.20 below. A prohibited act is involvement in one of the following money laundering offences established by POCA: concealing etc. (section 327), entering into an arrangement (section 328) or acquisition, use etc of criminal property (section 329). If the prohibited act is done before disclosure is made, the question of obtaining consent does not arise, but if disclosure is not made as soon as is practicable, you may commit an offence of failure to disclose (POCA sections 330, 331 and 332).

### **SOCA Consent**

#### **5.20 How is SOCA consent obtained to proceed with a suspicious transaction?**

Once a pre-transaction disclosure has been made, the transaction must not be proceeded with unless appropriate consent is obtained from SOCA. **A period of up to seven working days may be needed to obtain consent.** If you hear nothing from SOCA for seven working days starting on the day after the disclosure is made, consent may be presumed and you may proceed with the transaction. If consent is refused within that seven day period, you cannot proceed for a further **31 calendar days** starting on the day of refusal unless consent is given prior to the expiration of that period. These procedures are set out in greater detail in chapter 8 of the Law Society of England and Wales anti-money laundering practice note of 22 February 2008. This can be accessed at [www.lawsociety.org.uk](http://www.lawsociety.org.uk). Reference may also usefully be made to the *JMLSG Guidance to the UK Financial Sector* already mentioned.

### **Tipping-off**

**5.21 Most of my work involves attesting documents for clients on a 'while they wait' basis. If I am suspicious, how do I tell the client that I am unable to deal with the matter without 'tipping him off'?**

On admission, a notary swears that he will not perform a notarial act in cases where he knows there is violence or fraud, and this duty is paramount. If a client brings in a document which the notary suspects is being made for a fraudulent purpose and it is impractical for the notary to retain possession of the document without alerting the client of his suspicions, he should simply inform the client that he is unable to act, return the document to him unattested and report the matter to the Nominated Officer for him to consider making a report to SOCA based on such information as is available. However, in circumstances where the client is not expecting the immediate return of the document (e.g. the notary is arranging legalisation), the Nominated Officer should submit a report to the SOCA Consent desk prior to taking any action with regard to the document.

Consent Desk Officer –

Telephone No: 020 7238 8282

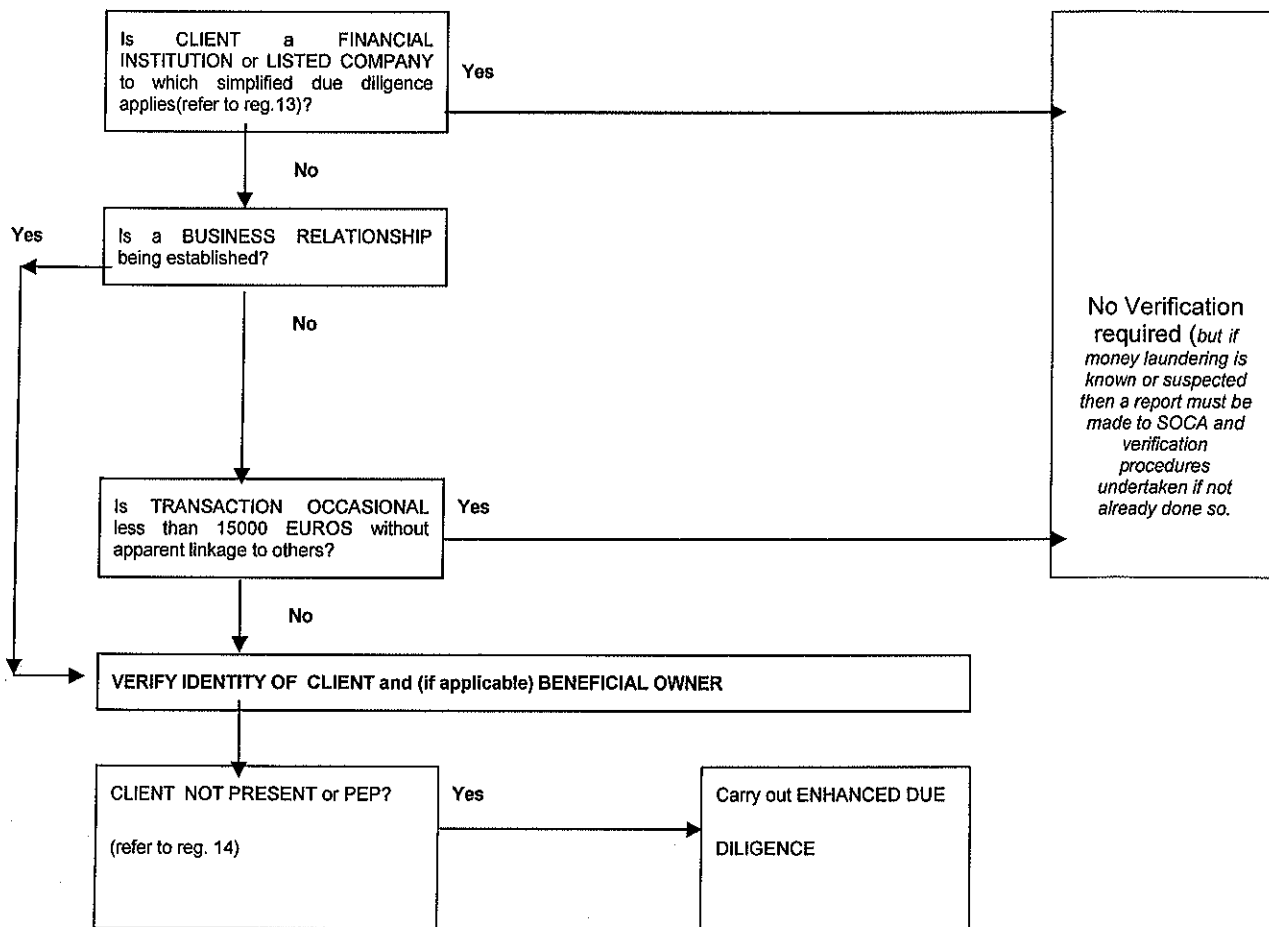
Fax No: 020 7238 8286

### Client confidentiality/privilege

#### **5.22 What about my duty of confidentiality to the client? Does legal professional privilege apply?**

As a notary, you are obliged to keep the affairs of your client confidential. In the case of solicitors, the client's right to confidentiality is protected by the doctrine of legal professional privilege; under section 330(6) of the Proceeds of Crime Act 2002, the failure by a 'professional legal adviser' to make a disclosure is not an offence if the information or other matter giving rise to his suspicion came to him in privileged circumstances. The extent to which legal professional privilege attaches to a notary's records has not been the subject of a legal decision in England and Wales, and in view of the notary's role as a public certifying officer his position is not necessarily analogous to that of other lawyers. Privilege is a difficult and evolving area of the law and one where, pending clarification of the status of notarial records, the notary may need to seek specific advice in particular circumstances, but if you are simply attesting the execution of a document and not giving legal advice, it is unlikely that privilege will apply. However, some assistance may be found in Chapter 6 of the anti-money laundering practice note of 22 February 2008 issued by the Law Society of England and Wales [www.lawsociety.org.uk](http://www.lawsociety.org.uk).

Section 6 (Verification of identity flowchart)



**Section 7 (Verification of client identity checklist)**

Note: Subject to compliance with the Notaries Practice Rules, the question of whether or not an ID document (or a combination of documents) is satisfactory evidence of the client's identity for the purposes of the Regulations depends upon the risks inherent in the transaction concerned. See the note to paragraph 5.8 above on the relative robustness of different categories of documents.  
 A **RISK- BASED** approach is key to successful compliance

**A. Evidence obtained to verify identity (see para. 5.8. above)**

Valid national Passport	<input type="checkbox"/>
Valid photocard national driving licence (full or provisional)	<input type="checkbox"/>
Valid (old style) full UK driving licence	<input type="checkbox"/>
Armed forces ID Card	<input type="checkbox"/>
National Identity Card (non-UK nationals)	<input type="checkbox"/>
Firearms certificate or shotgun licence	<input type="checkbox"/>
Identity card issued by the Electoral Office for Northern Ireland	<input type="checkbox"/>
Instrument of court appointment (e.g. appointment as liquidator or grant of probate)	<input type="checkbox"/>
Recent evidence of entitlement to state or local authority-funded benefit, tax credit, pension, educational or other grant*	<input type="checkbox"/>
Building Society passbook*	<input type="checkbox"/>
Credit Reference agency search*	<input type="checkbox"/>
Utility bills* (not ones printed off the internet)	<input type="checkbox"/>
Mortgage statement*	<input type="checkbox"/>
Council tax demand*	<input type="checkbox"/>
Bank/Building Society/credit card statement* (but not ones printed off the internet)	<input type="checkbox"/>
Home visit to applicant's address*	<input type="checkbox"/>
Check of voters roll*	<input type="checkbox"/>

\*Suitable for proof of address only

**B. Evidence obtained for unquoted company or partnership**

Certificate of Incorporation or equivalent	<input type="checkbox"/>
Certificate of Trade or equivalent	<input type="checkbox"/>
Company search	<input type="checkbox"/>
Latest report and audited accounts	<input type="checkbox"/>
Principal shareholder/partner	<input type="checkbox"/>
Principal director	<input type="checkbox"/>

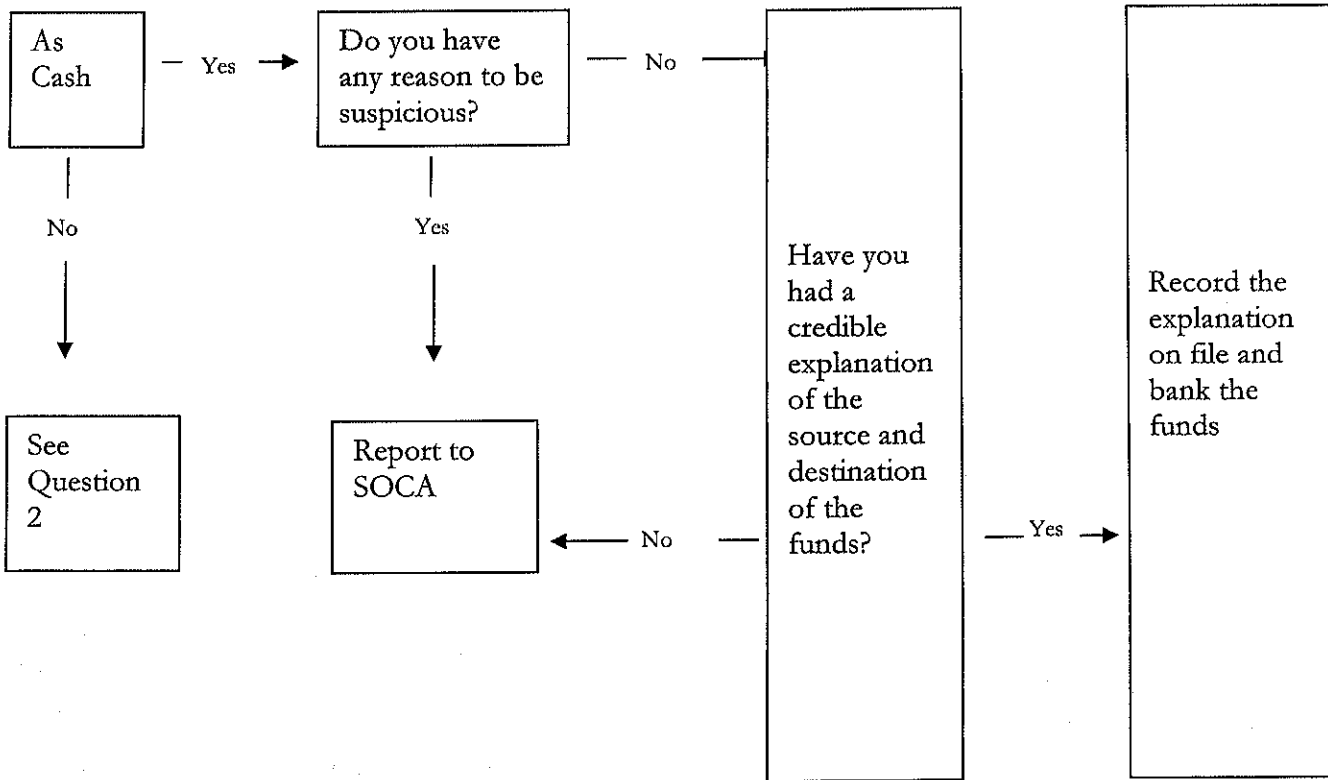
Section 8 (Money laundering check list)

**Source and destination of Funds**

If you have properly identified the new client, this flow chart should be used to ensure that the appropriate level of checking is applied to the funds.

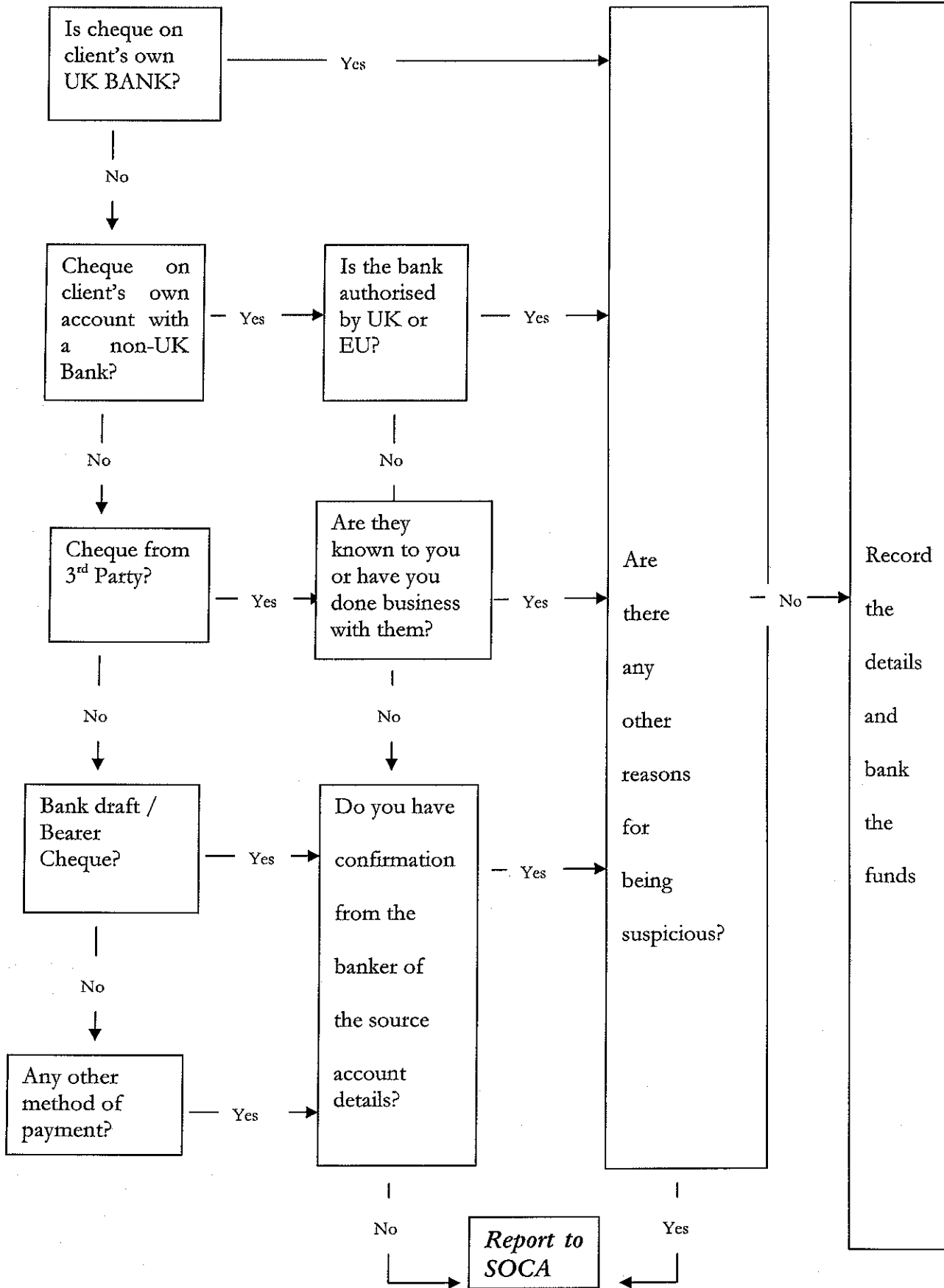
Question

Have you received funds from the client?



Section 8 (Continued)

Question 2 Have you received non cash payment?



**Section 9 (Financial Action Task Force (FATF))**

As at April, 1 2008, deficiencies in the AML/CFT regimes in the following countries and territory had been identified by the FATF:

**Uzbekistan**

**Iran**

**Pakistan**

**Turkmenistan**

**São Tomé and Príncipe**

**Northern part of Cyprus**

**Further information can be obtained at [www.fatf-gafi.org](http://www.fatf-gafi.org). and refer to the Joint Money Laundering Steering Group website [www.jmlsg.org.uk](http://www.jmlsg.org.uk) for information on country risk generally.**

NOTE: The FATF is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. Since its creation the FATF has spearheaded the effort to adopt and implement measures designed to counter the use of the financial system by criminals. The principal objective of this initiative is to reduce the vulnerability of the financial system to money laundering by ensuring that all financial centres adopt and implement measures for the prevention, detection and punishment of money laundering according to internationally recognised standards.

## Section 10

### **HM Treasury consolidated list of persons designated as being subject to financial restrictions.**

This includes targets listed by the United Nations, European Union and United Kingdom under legislation relating to current financial restrictions regimes. The purpose of the HM Treasury list is to draw together in one place all the names of designated persons for the various financial restrictions regimes effective in the UK.

### **General legal requirements**

The UK imposes financial restrictions on persons and entities following their designation at the United Nations and/or European Union. The UK also operates a domestic counter-terrorism regime, where the Government decides to impose financial restrictions on certain persons and entities.

Financial restrictions in the UK are governed by various pieces of legislation. In all circumstances, where an asset freeze is imposed, it is unlawful to deal with the funds or other assets of the designated person or make payments to them or for their benefit.

A list of all financial restrictions currently in force in the UK is maintained by the Treasury's Asset Freezing Unit. The Consolidated List of persons designated as being subject to financial restrictions can be found on the HM Treasury web site at: [http://www.hm-treasury.gov.uk/documents/financial\\_services/sanctions/fin\\_sanctions\\_index.cfm](http://www.hm-treasury.gov.uk/documents/financial_services/sanctions/fin_sanctions_index.cfm)

Further information on financial restrictions can also be found via this website.

There are specific financial restrictions targeted at the Al-Qaida network and Terrorism

Under the relevant legislation it is a criminal offence for any natural or legal person to:

- a) Deal with the funds of designated persons
- b) Make funds and economic resources, and in the case of Terrorism financial services, available, directly or indirectly to or for the benefit of designated persons, or
- c) Knowingly and intentionally participate in activities that would directly or indirectly circumvent the financial restrictions or enable or facilitate the commission of an offence relating to a) and b) above.

**“Deal with”** means:

(a) In respect of funds -

- Use, alter, move, allow access to or transfer
- Deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination, or
- Make any other change that would enable use, including portfolio management and

(b) In respect of economic resources -

- Use to obtain funds, goods or services in any way, including (but not limited to) by selling, hiring or mortgaging the resources.

The purpose of this legislation imposing financial restrictions is primarily to prevent the diversion of funds to terrorism and terrorist purposes.

HM Treasury has the power to grant licenses exempting certain transactions from the financial restrictions. Requests to disapply the financial restrictions in relation to a designated person are considered by the Treasury on a case-by-case basis to ensure that there is no risk of funds being diverted to terrorism. To apply for a licence, please contact the Asset Freezing Unit at HM Treasury using the contact details below.

### **Businesses**

Businesses need to have appropriate policies and procedures in place to monitor payments in order to prevent breaches of the financial restrictions legislation.

For manual checking, businesses can register with the HM Treasury Asset Freezing Unit update service (directly or via a third party).

If checking is automated, businesses will need to ensure that the relevant software includes checks against the latest consolidated list.

The Asset Freezing Unit may also be contacted to provide guidance and to assist with any concerns regarding financial restrictions at:

Asset Freezing Unit

Tel: 020 7270 5664/5454

Fax: 020 7451 7677

E mail: [assetfreezingunit@hm-treasury.gov.uk](mailto:assetfreezingunit@hm-treasury.gov.uk)

In the event that a customer or a payee is identified as a designated person payments must not proceed unless a licence is granted by the Treasury, as this would be a breach of the financial restrictions. The Treasury should be informed immediately and the transaction suspended pending their advice. No funds should be returned to the designated person.

The firm may also need to consider whether there is an obligation also to report to SOCA under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

Written reports can be made to the Asset Freezing Unit at:  
The Asset Freezing Unit  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ

## Section 11 (Specific guidance to nominated officers)

Now that you've accepted the responsibilities for implementing your practice's anti-money laundering policies do you have an adequate set of procedures to meet the requirements of the anti-money laundering legislation and your policy objectives?

### 1. Training and management issues.

- What type of training do you have in place?
- Which of your partners and employees have been trained?
- Do you know how sound their grasp of the task is?
- Do you train new employees?
- What about refresher/update courses?
- Do you share the answers to these questions with the partnership?
- Have you got clear lines for reporting and following up?
- Do you have the right support and resources to cover this challenge?
- Do you have the influence within the partnership to change procedures once you have identified a problem within the practice?
- When setting up a new branch or creating a new department have you considered the risk of money laundering in this area and given training?
- If you have overseas connections and clients, do they feature in FATF lists of countries or territories having deficient AML/CFT regimes

### 2. Monitoring performance.

- Do you understand under what circumstances consent is required?
- Do you have a list of suspicious transaction reports?
- If you have no reports, is this a worry? (see training).

### 3. Reporting

- Do you have access to all the relevant information held by your business to enable you to make an informed decision about disclosing 'suspicious activity' to SOCA?
- Do you have access to the SOCA forms – see paragraph 5.18 of these notes?
- Do you summarise your position and report to the partnership annually?
- Do you know how to reach a safe decision on a suspicious transaction report?
- Do you follow up for appropriate consent in all urgent cases?

#### 4. Risk

- Have you assessed your practice's risk of exposure to money laundering?
- Have you developed and implemented a risk assessment policy for your practice?

If you are not comfortable with any of these questions and your response to them, please address them now. The benefits of conducting a thorough review and update of your policies and systems cannot be emphasised enough.

Take action now!

**Schedule 1**

**Money Laundering Regulations 2007**

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STATUTORY INSTRUMENTS

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2007 No. 2157

FINANCIAL SERVICES

The Money Laundering Regulations 2007

*Made* - - - - 24th July 2007  
*Laid before Parliament* 25th July 2007  
*Coming into force* - - 15th December 2007

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The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to preventing the use of the financial system for the purpose of money laundering;

The Treasury, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972 and by sections 168(4)(b), 402(1)(b), 417(1)(c) and 428(3) of the Financial Services and Markets Act 2000(d), make the following Regulations:

PART 1  
GENERAL

**Citation, commencement etc.**

1.—(1) These Regulations may be cited as the Money Laundering Regulations 2007 and come into force on 15th December 2007.

(2) These Regulations are prescribed for the purposes of sections 168(4)(b) (appointment of persons to carry out investigations in particular cases) and 402(1)(b) (power of the Authority to institute proceedings for certain other offences) of the 2000 Act.

(3) The Money Laundering Regulations 2003(e) are revoked.

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(a) S.I. 1992/1711.

(b) 1972 c. 68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51). By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2<sup>nd</sup> May 1992 (Cm 2673, OJ No L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17<sup>th</sup> March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p.572). For the decision of the EEA Joint Committee in relation to Directive 2005/60/EC, see Decision No 37/2006 of 7th July 2006 amending Annex IX (Financial Services) to the EEA Agreement (OJ No L 289 19.10.2006, p. 23).

(c) See the definition of "prescribed".

(d) 2000 c. 8.

(e) S.I. 2003/3075.

## Interpretation

### 2.—(1) In these Regulations—

- “the 2000 Act” means the Financial Services and Markets Act 2000;
- “Annex I financial institution” has the meaning given by regulation 22(1);
- “auditor”, except in regulation 17(2)(c) and (d), has the meaning given by regulation 3(4) and (5);
- “authorised person” means a person who is authorised for the purposes of the 2000 Act(a);
- “the Authority” means the Financial Services Authority;
- “the banking consolidation directive” means Directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions(b);
- “beneficial owner” has the meaning given by regulation 6;
- “business relationship” means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration;
- “cash” means notes, coins or travellers’ cheques in any currency;
- “casino” has the meaning given by regulation 3(13);
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
- “consumer credit financial institution” has the meaning given by regulation 22(1);
- “credit institution” has the meaning given by regulation 3(2);
- “customer due diligence measures” has the meaning given by regulation 5;
- “DETT” means the Department of Enterprise, Trade and Investment in Northern Ireland;
- “the electronic money directive” means Directive 2000/46/EC of the European Parliament and of the Council of 18th September 2000 on the taking up, pursuit and prudential supervision of the business of electronic money institutions(c);
- “estate agent” has the meaning given by regulation 3(11);
- “external accountant” has the meaning given by regulation 3(7);
- “financial institution” has the meaning given by regulation 3(3);
- “firm” means any entity, whether or not a legal person, that is not an individual and includes a body corporate and a partnership or other unincorporated association;
- “high value dealer” has the meaning given by regulation 3(12);
- “the implementing measures directive” means Commission Directive 2006/70/EC of 1st August 2006 laying down implementing measures for the money laundering directive(d);
- “independent legal professional” has the meaning given by regulation 3(9);
- “insolvency practitioner”, except in regulation 17(2)(c) and (d), has the meaning given by regulation 3(6);
- “the life assurance consolidation directive” means Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance(e);
- “local weights and measures authority” has the meaning given by section 69 of the Weights and Measures Act 1985(f) (local weights and measures authorities);

(a) See section 31(2) of the 2000 Act.

(b) OJ No L 177, 30.6.2006, p. 1.

(c) OJ No L 275, 27.10.2000, p. 39.

(d) OJ No L 214, 4.8.2006, p. 29.

(e) OJ No L 345, 19.12.2002, p. 1.

(f) 1985 c. 72, Section 69(3) was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph

"the markets in financial instruments directive" means Directive 2004/39/EC of the European Parliament and of the Council of 12th April 2004(a) on markets in financial instruments;

"money laundering" means an act which falls within section 340(1) of the Proceeds of Crime Act 2002(b);

"the money laundering directive" means Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005(c) on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;

"money service business" means an undertaking which by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or cashes cheques which are made payable to customers;

"nominated officer" means a person who is nominated to receive disclosures under Part 7 of the Proceeds of Crime Act 2002(d) (money laundering) or Part 3 of the Terrorism Act 2000(e) (terrorist property);

"non-EEA state" means a state that is not an EEA state;

"notice" means a notice in writing;

"occasional transaction" means a transaction (carried out other than as part of a business relationship) amounting to 15,000 euro or more, whether the transaction is carried out in a single operation or several operations which appear to be linked;

"the OFT" means the Office of Fair Trading;

"ongoing monitoring" has the meaning given by regulation 8(2);

"regulated market"—

(a) within the EEA, has the meaning given by point 14 of Article 4(1) of the markets in financial instruments directive; and

(b) outside the EEA, means a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards and are equivalent to the specified disclosure obligations;

"relevant person" means a person to whom, in accordance with regulations 3 and 4, these Regulations apply;

"the specified disclosure obligations" means disclosure requirements consistent with—

(a) Article 6(1) to (4) of Directive 2003/6/EC of the European Parliament and of the Council of 28th January 2003(f) on insider dealing and market manipulation;

(b) Articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4th November 2003(g) on the prospectuses to be published when securities are offered to the public or admitted to trading;

(c) Articles 4 to 6, 14, 16 to 19 and 30 of Directive 2004/109/EC of the European Parliament and of the Council of 15th December 2004(h) relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; or

(d) Community legislation made under the provisions mentioned in sub-paragraphs (a) to (c);

"supervisory authority" in relation to any relevant person means the supervisory authority specified for such a person by regulation 23;

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(a) OJ No L 145, 30.4.2004, p. 1, amended by Directive 2006/31/EC (OJ No L 114, 27.4.06, p. 60).

(b) 2002 c. 29.

(c) OJ No L 309, 25.11.2005, p. 15.

(d) 2002 c. 29. Part 7 was amended by the Serious Organised Crime and Police Act 2005 (c.15) sections 102 to 106, Schedule 4, paragraphs 168, 173 and 174 and Schedule 17, Part 2, and S.I. 2006/306.

(e) 2000 c. 11. Part 3 was amended by the Anti-Terrorism, Crime and Security Act 2001 (c.24) Schedule 2, Part 3, paragraph 5 and the Serious Organised Crime and Police Act 2005, Schedule 4, paragraphs 125 to 129.

(f) OJ No L 96, 12.4.2003, P. 20.

(g) OJ No L 345, 31.12.2003, P. 69.

(h) OJ No L 390, 31.12.2004, P. 43.

"tax adviser" (except in regulation 11(3)) has the meaning given by regulation 3(8);

"terrorist financing" means an offence under—

- (a) section 15 (fund-raising), 16 (use and possession), 17 (funding arrangements), 18 (money laundering) or 63 (terrorist finance: jurisdiction) of the Terrorism Act 2000;
- (b) paragraph 7(2) or (3) of Schedule 3 to the Anti-Terrorism, Crime and Security Act 2001(a) (freezing orders);
- (c) article 7, 8 or 10 of the Terrorism (United Nations Measures) Order 2006(b); or
- (d) article 7, 8 or 10 of the Al-Qaida and Taliban (United Nations Measures) Order 2006(c);

"trust or company service provider" has the meaning given by regulation 3(10).

(2) In these Regulations, references to amounts in euro include references to equivalent amounts in another currency.

(3) Unless otherwise defined, expressions used in these Regulations and the money laundering directive have the same meaning as in the money laundering directive and expressions used in these Regulations and in the implementing measures directive have the same meaning as in the implementing measures directive.

#### Application of the Regulations

3.—(1) Subject to regulation 4, these Regulations apply to the following persons acting in the course of business carried on by them in the United Kingdom ("relevant persons")—

- (a) credit institutions;
- (b) financial institutions;
- (c) auditors, insolvency practitioners, external accountants and tax advisers;
- (d) independent legal professionals;
- (e) trust or company service providers;
- (f) estate agents;
- (g) high value dealers;
- (h) casinos.

(2) "Credit institution" means—

- (a) a credit institution as defined in Article 4(1)(a) of the banking consolidation directive; or
- (b) a branch (within the meaning of Article 4(3) of that directive) located in an EEA state of an institution falling within sub-paragraph (a) (or an equivalent institution whose head office is located in a non-EEA state) wherever its head office is located,

when it accepts deposits or other repayable funds from the public or grants credits for its own account (within the meaning of the banking consolidation directive).

(3) "Financial institution" means—

- (a) an undertaking, including a money service business, when it carries out one or more of the activities listed in points 2 to 12 and 14 of Annex 1 to the banking consolidation directive (the relevant text of which is set out in Schedule 1 to these Regulations), other than—
  - (i) a credit institution;
  - (ii) an undertaking whose only listed activity is trading for own account in one or more of the products listed in point 7 of Annex 1 to the banking consolidation directive where the undertaking does not have a customer.

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(a) 2001 c. 24.  
(b) S.I. 2006/2657.  
(c) S.I. 2006/2952.

and, for this purpose, "customer" means a third party which is not a member of the same group as the undertaking;

- (b) an insurance company duly authorised in accordance with the life assurance consolidation directive, when it carries out activities covered by that directive;
  - (c) a person whose regular occupation or business is the provision to other persons of an investment service or the performance of an investment activity on a professional basis, when providing or performing investment services or activities (within the meaning of the markets in financial instruments directive(a)), other than a person falling within Article 2 of that directive;
  - (d) a collective investment undertaking, when marketing or otherwise offering its units or shares;
  - (e) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council of 9th December 2002(b) on insurance mediation, with the exception of a tied insurance intermediary as mentioned in Article 2(7) of that Directive, when it acts in respect of contracts of long-term insurance within the meaning given by article 3(1) of, and Part II of Schedule 1 to, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c);
  - (f) a branch located in an EEA state of a person referred to in sub-paragraphs (a) to (e) (or an equivalent person whose head office is located in a non-EEA state), wherever its head office is located, when carrying out any activity mentioned in sub-paragraphs (a) to (e);
  - (g) the National Savings Bank;
  - (h) the Director of Savings, when money is raised under the auspices of the Director under the National Loans Act 1968(d).
- (4) "Auditor" means any firm or individual who is a statutory auditor within the meaning of Part 42 of the Companies Act 2006(e) (statutory auditors), when carrying out statutory audit work within the meaning of section 1210 of that Act.
- (5) Before the entry into force of Part 42 of the Companies Act 2006 the reference in paragraph (4) to—
- (a) a person who is a statutory auditor shall be treated as a reference to a person who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989(f) (eligibility for appointment) or article 28 of the Companies (Northern Ireland) Order 1990(g); and
  - (b) the carrying out of statutory audit work shall be treated as a reference to the provision of audit services.
- (6) "Insolvency practitioner" means any person who acts as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986(h) (meaning of "act as insolvency practitioner") or article 3 of the Insolvency (Northern Ireland) Order 1989(i).
- (7) "External accountant" means a firm or sole practitioner who by way of business provides accountancy services to other persons, when providing such services.
- (8) "Tax adviser" means a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons, when providing such services.

(a) See Article 4(1) of the directive.

(b) OJ No L 9, 15.1.2003, p. 3.

(c) S.I. 2001/544. There are amendments to this Order not relevant to these Regulations.

(d) 1968 c. 13.

(e) 2006 c. 46.

(f) 1989 c. 40.

(g) 1990 No. 593 (N.I. 5).

(h) 1986 c. 45; s388 was amended by section 4 of the Insolvency Act 2000 (c.45), section 11 of the Bankruptcy (Scotland) Act 1993 (c.6), and S.I. 1994/2421, 2002/1240 and 2002/2708.

(i) 1989 No. 2405 (NI 19); article 3 was amended by the Insolvency (Northern Ireland) Order 2002 No. 3152 (N.I. 6) and S.R. 1995/225, 2002/334, 2003/550, 2004/307.

(9) "Independent legal professional" means a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when participating in financial or real property transactions concerning—

- (a) the buying and selling of real property or business entities;
- (b) the managing of client money, securities or other assets;
- (c) the opening or management of bank, savings or securities accounts;
- (d) the organisation of contributions necessary for the creation, operation or management of companies; or
- (e) the creation, operation or management of trusts, companies or similar structures,

and, for this purpose, a person participates 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 transaction.

(10) "Trust or company service provider" means a firm or sole practitioner who by way of business provides any of the following services to other persons—

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act—
  - (i) as a director or secretary of a company;
  - (ii) as a partner of a partnership; or
  - (iii) in a similar position in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
- (d) acting, or arranging for another person to act, as—
  - (i) a trustee of an express trust or similar legal arrangement; or
  - (ii) a nominee shareholder for a person other than a company whose securities are listed on a regulated market,

when providing such services.

(11) "Estate agent" means—

- (a) a firm; or
- (b) sole practitioner,

who, or whose employees, carry out estate agency work (within the meaning given by section 1 of the Estate Agents Act 1979(a) (estate agency work)), when in the course of carrying out such work.

(12) "High value dealer" means a firm or sole trader who by way of business trades in goods (including an auctioneer dealing in goods), when he receives, in respect of any transaction, a payment or payments in cash of at least 15,000 euros in total, whether the transaction is executed in a single operation or in several operations which appear to be linked.

(13) "Casino" means the holder of a casino operating licence and, for this purpose, a "casino operating licence" has the meaning given by section 65(2) of the Gambling Act 2005(b) (nature of licence).

(14) In the application of this regulation to Scotland, for "real property" in paragraph (9) substitute "heritable property".

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(a) 1979 c. 38. Section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), section 56, Schedule 1, Part I, paragraph 40, the Planning (Consequential Provisions) Act 1990 (c.11), section 4, Schedule 2, paragraph 42, the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11), sections 4 and 6(2), Schedule 2, paragraph 28 and by S.L. 2001/1283.

(b) See also section 7 on the meaning of "casino" and Part 5 of the Act generally on operating licences

## Exclusions

4.—(1) These Regulations do not apply to the following persons when carrying out any of the following activities—

- (a) a society registered under the Industrial and Provident Societies Act 1965(a), when it—
  - (i) issues withdrawable share capital within the limit set by section 6 of that Act (maximum shareholding in society); or
  - (ii) accepts deposits from the public within the limit set by section 7(3) of that Act (carrying on of banking by societies);
- (b) a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969(b), when it—
  - (i) issues withdrawable share capital within the limit set by section 6 of that Act (maximum shareholding in society); or
  - (ii) accepts deposits from the public within the limit set by section 7(3) of that Act (carrying on of banking by societies);
- (c) a person who is (or falls within a class of persons) specified in any of paragraphs 2 to 23, 25 to 38 or 40 to 49 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001(c), when carrying out any activity in respect of which he is exempt;
- (d) a person who was an exempted person for the purposes of section 45 of the Financial Services Act 1986(d) (miscellaneous exemptions) immediately before its repeal, when exercising the functions specified in that section;
- (e) a person whose main activity is that of a high value dealer, when he engages in financial activity on an occasional or very limited basis as set out in paragraph 1 of Schedule 2 to these Regulations; or
- (f) a person, when he prepares a home information pack or a document or information for inclusion in a home information pack.

(2) These Regulations do not apply to a person who falls within regulation 3 solely as a result of his engaging in financial activity on an occasional or very limited basis as set out in paragraph 1 of Schedule 2 to these Regulations.

(3) Parts 2 to 5 of these Regulations do not apply to—

- (a) the Auditor General for Scotland;
- (b) the Auditor General for Wales;
- (c) the Bank of England;
- (d) the Comptroller and Auditor General;
- (e) the Comptroller and Auditor General for Northern Ireland;
- (f) the Official Solicitor to the Supreme Court, when acting as trustee in his official capacity;
- (g) the Treasury Solicitor.

(4) In paragraph (1)(f), "home information pack" has the same meaning as in Part 5 of the Housing Act 2004(e) (home information packs).

(a) 1965 c. 12.

(b) 1969 c. 24 (N.I.).

(c) S.I. 2001/1201. This Order was amended by S.I. 2001/3623, S.I. 2002/1310, S.I. 2003/47, S.I. 2003/1675, S.I. 2005/592, S.I. 2005/2114, S.I. 2005/3225, S.I. 2006/2383 and S.I. 2007/125. Paragraphs 1, 24 and 24A exempt respectively the Bank of England, industrial and provident societies and credit unions within the meaning of the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I.12)) in respect of the activity of accepting deposits. Paragraph 39 exempts insolvency practitioners in respect of any regulated activity mentioned in Article 5(1). Paragraph 24A was inserted by S.I. 2001/3623.

(d) 1986 c. 60. This Act was repealed as from 1st December 2001 by S.I. 2001/3649, art.3(1)(c).

(e) 2004 c. 34.

**PART 2**  
**CUSTOMER DUE DILIGENCE**

**Meaning of customer due diligence measures**

**5. "Customer due diligence measures" means—**

- (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
- (b) 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
- (c) obtaining information on the purpose and intended nature of the business relationship.

**Meaning of beneficial owner**

**6.—(1) In the case of a body corporate, "beneficial owner" means any individual who—**

- (a) as respects any body other than a company whose securities are listed on a regulated market, ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the body; or
- (b) as respects any body corporate, otherwise exercises control over the management of the body.

**(2) In the case of a partnership (other than a limited liability partnership), "beneficial owner" means any individual who—**

- (a) ultimately is entitled to or controls (whether the entitlement or control is direct or indirect) more than a 25% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership; or
- (b) otherwise exercises control over the management of the partnership.

**(3) In the case of a trust, "beneficial owner" means—**

- (a) any individual who is entitled to a specified interest in at least 25% of the capital of the trust property;
- (b) as respects any trust other than one which is set up or operates entirely for the benefit of individuals falling within sub-paragraph (a), the class of persons in whose main interest the trust is set up or operates;
- (c) any individual who has control over the trust.

**(4) In paragraph (3)—**

"specified interest" means a vested interest which is—

- (a) in possession or in remainder or reversion (or, in Scotland, in fee); and
- (b) defeasible or indefeasible;

"control" means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to—

- (a) dispose of, advance, lend, invest, pay or apply trust property;
- (b) vary the trust;
- (c) add or remove a person as a beneficiary or to or from a class of beneficiaries;
- (d) appoint or remove trustees;
- (e) direct, withhold consent to or veto the exercise of a power such as is mentioned in sub-paragraph (a), (b), (c) or (d).

(5) For the purposes of paragraph (3)—

- (a) where an individual is the beneficial owner of a body corporate which is entitled to a specified interest in the capital of the trust property or which has control over the trust, the individual is to be regarded as entitled to the interest or having control over the trust; and
- (b) an individual does not have control solely as a result of—
  - (i) his consent being required in accordance with section 32(1)(c) of the Trustee Act 1925(a) (power of advancement);
  - (ii) any discretion delegated to him under section 34 of the Pensions Act 1995(b) (power of investment and delegation);
  - (iii) the power to give a direction conferred on him by section 19(2) of the Trusts of Land and Appointment of Trustees Act 1996(c) (appointment and retirement of trustee at instance of beneficiaries); or
  - (iv) the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are of full age and capacity and (taken together) absolutely entitled to the property subject to the trust (or, in Scotland, have a full and unqualified right to the fee).

(6) In the case of a legal entity or legal arrangement which does not fall within paragraph (1), (2) or (3), "beneficial owner" means—

- (a) where the individuals who benefit from the entity or arrangement have been determined, any individual who benefits from at least 25% of the property of the entity or arrangement;
- (b) where the individuals who benefit from the entity or arrangement have yet to be determined, the class of persons in whose main interest the entity or arrangement is set up or operates;
- (c) any individual who exercises control over at least 25% of the property of the entity or arrangement.

(7) For the purposes of paragraph (6), where an individual is the beneficial owner of a body corporate which benefits from or exercises control over the property of the entity or arrangement, the individual is to be regarded as benefiting from or exercising control over the property of the entity or arrangement.

(8) In the case of an estate of a deceased person in the course of administration, "beneficial owner" means—

- (a) in England and Wales and Northern Ireland, the executor, original or by representation, or administrator for the time being of a deceased person;
- (b) in Scotland, the executor for the purposes of the Executors (Scotland) Act 1900(d).

(9) In any other case, "beneficial owner" means the individual who ultimately owns or controls the customer or on whose behalf a transaction is being conducted.

(10) In this regulation—

"arrangement", "entity" and "trust" means an arrangement, entity or trust which administers and distributes funds;

"limited liability partnership" has the meaning given by the Limited Liability Partnerships Act 2000(e).

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(a) 1925 c. 19.

(b) 1995 c. 26.

(c) 1996 c. 47.

(d) 1900 c. 55. Sections 6 and 7 were amended by the Succession (Scotland) Act 1964 (c.41).

(e) 2000 c. 12.

#### Application of customer due diligence measures

7.—(1) Subject to regulations 9, 10, 12, 13, 14, 16(4) and 17, a relevant person must apply customer due diligence measures when he—

- (a) establishes a business relationship;
- (b) carries out an occasional transaction;
- (c) suspects money laundering or terrorist financing;
- (d) doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification.

(2) Subject to regulation 16(4), a relevant person must also apply customer due diligence measures at other appropriate times to existing customers on a risk-sensitive basis.

(3) A relevant person must—

- (a) determine the extent of customer due diligence measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction; and
- (b) be able to demonstrate to his supervisory authority that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.

(4) Where—

- (a) a relevant person is required to apply customer due diligence measures in the case of a trust, legal entity (other than a body corporate) or a legal arrangement (other than a trust); and
- (b) the class of persons in whose main interest the trust, entity or arrangement is set up or operates is identified as a beneficial owner,

the relevant person is not required to identify all the members of the class.

(5) Paragraph (3)(b) does not apply to the National Savings Bank or the Director of Savings.

#### Ongoing monitoring

8.—(1) A relevant person must conduct ongoing monitoring of a business relationship.

(2) "Ongoing monitoring" of a business relationship means—

- (a) scrutiny of 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; and
- (b) keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date.

(3) Regulation 7(3) applies to the duty to conduct ongoing monitoring under paragraph (1) as it applies to customer due diligence measures.

#### Timing of verification

9.—(1) This regulation applies in respect of the duty under regulation 7(1)(a) and (b) to apply the customer due diligence measures referred to in regulation 5(a) and (b).

(2) Subject to paragraphs (3) to (5) and regulation 10, a relevant person must verify the identity of the customer (and any beneficial owner) before the establishment of a business relationship or the carrying out of an occasional transaction.

(3) Such verification may be completed during the establishment of a business relationship if—

- (a) this is necessary not to interrupt the normal conduct of business; and
- (b) there is little risk of money laundering or terrorist financing occurring,

provided that the verification is completed as soon as practicable after contact is first established.

(4) The verification of the identity of the beneficiary under a life insurance policy may take place after the business relationship has been established provided that it takes place at or before the time of payout or at or before the time the beneficiary exercises a right vested under the policy.

(5) The verification of the identity of a bank account holder may take place after the bank account has been opened provided that there are adequate safeguards in place to ensure that—

- (a) the account is not closed; and
- (b) transactions are not carried out by or on behalf of the account holder (including any payment from the account to the account holder),

before verification has been completed.

### Casinos

10.—(1) A casino must establish and verify the identity of—

- (a) all customers to whom the casino makes facilities for gaming available—
  - (i) before entry to any premises where such facilities are provided; or
  - (ii) where the facilities are for remote gaming, before access is given to such facilities; or
- (b) if the specified conditions are met, all customers who, in the course of any period of 24 hours—
  - (i) purchase from, or exchange with, the casino chips with a total value of 2,000 euro or more;
  - (ii) pay the casino 2,000 or more for the use of gaming machines; or
  - (iii) pay to, or stake with, the casino 2,000 euro or more in connection with facilities for remote gaming.

(2) The specified conditions are—

- (a) the casino verifies the identity of each customer before or immediately after such purchase, exchange, payment or stake takes place, and
- (b) the Gambling Commission is satisfied that the casino has appropriate procedures in place to monitor and record—
  - (i) the total value of chips purchased from or exchanged with the casino;
  - (ii) the total money paid for the use of gaming machines; or
  - (iii) the total money paid or staked in connection with facilities for remote gaming, by each customer.

(3) In this regulation—

“gaming”, “gaming machine”, “remote operating licence” and “stake” have the meanings given by, respectively, sections 6(1) (gaming & game of chance), 235 (gaming machine), 67 (remote gambling) and 353(1) (interpretation) of the Gambling Act 2005(a);

“premises” means premises subject to—

- (a) a casino premises licence within the meaning of section 150(1)(a) of the Gambling Act 2005 (nature of licence); or
- (b) a converted casino premises licence within the meaning of paragraph 65 of Part 7 of Schedule 4 to the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006(b);

“remote gaming” means gaming provided pursuant to a remote operating licence.

(a) 2005 c. 19.

(b) S.I. 2006/3272 (C.119). There are amendments not relevant to these Regulations.

#### Requirement to cease transactions etc.

11.—(1) Where, in relation to any customer, a relevant person is unable to apply customer due diligence measures in accordance with the provisions of this Part, he—

- (a) must not carry out a transaction with or for the customer through a bank account;
- (b) must not establish a business relationship or carry out an occasional transaction with the customer;
- (c) must terminate any existing business relationship with the customer;
- (d) must consider whether he is required to make a disclosure by Part 7 of the Proceeds of Crime Act 2002 or Part 3 of the Terrorism Act 2000.

(2) Paragraph (1) does not apply where a lawyer or other professional adviser is in the course of ascertaining the legal position for his client or performing his task of defending or representing that client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings.

(3) In paragraph (2), "other professional adviser" means an auditor, accountant or tax adviser who is a member of a professional body which is established for any such persons and which makes provision for—

- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.

#### Exception for trustees of debt issues

12.—(1) A relevant person—

- (a) who is appointed by the issuer of instruments or securities specified in paragraph (2) as trustee of an issue of such instruments or securities; or
- (b) whose customer is a trustee of an issue of such instruments or securities,

is not required to apply the customer due diligence measure referred to in regulation 5(b) in respect of the holders of such instruments or securities.

(2) The specified instruments and securities are—

- (a) instruments which fall within article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a); and
- (b) securities which fall within article 78 of that Order.

#### Simplified due diligence

13.—(1) A relevant person is not required to apply customer due diligence measures in the circumstances mentioned in regulation 7(1)(a), (b) or (d) where he has reasonable grounds for believing that the customer, transaction or product related to such transaction, falls within any of the following paragraphs.

(2) The customer is—

- (a) a credit or financial institution which is subject to the requirements of the money laundering directive; or
- (b) a credit or financial institution (or equivalent institution) which—
  - (i) is situated in a non-EEA state which imposes requirements equivalent to those laid down in the money laundering directive; and
  - (ii) is supervised for compliance with those requirements.

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(a) S.I. 2001/544. There are amendments not relevant to these Regulations.