



# Keeping watch

It is essential that IFA members maintain vigilance against their businesses being used for money laundering. *Anne Davis* provides a round-up of the latest updates and developments.



**Anne Davis** is Head of Regulation and Policy at the IFA. She has responsibility for regulation, policy, disciplinary, anti-money laundering and making representations in response to consultations affecting the profession. She is a chartered accountant and has a wide range of experience in management and financial accounting, project management, system implementation, policy and regulation. Anne has worked in retail, financial services and the not-for-profit sector. She is also a trustee for some charities.  
E: AnneD@ifa.org.uk

## TEN SECOND SUMMARY

- 1 The past year has seen new regulations and guidance on anti-money laundering.
- 2 Firms must conduct an assessment and document their money laundering risks.
- 3 The OFSI *Guide to Financial Sanctions* will help firms to understand when a possible breach of financial sanctions should be reported.

New anti-money laundering (AML) regulations came into force last year and were followed by significant changes to the money laundering reporting regime and the establishment of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS). Several new publications have been issued.

- The UK's second National Risk Assessment of Money Laundering and Terrorist Financing (NRA) by HM Treasury.
- AML guidance for the accountancy sector.
- Guidance on circumstances where there might be a high risk of money laundering and terrorist financing.
- Updated sanctions guidance and new anti-money laundering (AML) reporting obligations.

Finally, the IFA is working in partnership with the legal and accountancy sectors and the government to support the "Flag It Up" campaign. If any of the above is news to members working in public practice, they should continue reading.

### Money Laundering Regulations 2017

The new Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations SI 2017/692 (MLR 2017) came into force on the 26 June 2017 and replace the Money Laundering Regulations 2007.

As mentioned in the IFA's email to members in July 2017 (and available at [tinyurl.com/y8ykvaqn](http://tinyurl.com/y8ykvaqn)) some of the key changes are as follows.

- **Risk-based approach.** Firms must set out policies and procedures for carrying out due diligence on a risk-sensitive basis and adopt suitable systems and controls to mitigate the money laundering risks identified by the firm in their risk assessment.
- **Risk assessment.** Firms must conduct and document a risk assessment of the money laundering challenges faced by the firm as a whole, not only from the clients. Firms must consider the overall risk by assessing their customers, countries of operation, the products and services offered, and how services are

delivered. Key factors to be taken into account are customers, geography, products and services, transactions and delivery channels.

The risk assessments must be kept up to date, documented and should involve discussions with the money laundering reporting officer (MLRO) and appropriate individuals to provide assurance that all risks have been identified.

- *Policies, procedures and controls.* Firms need to have policies and controls in place to mitigate the money laundering risks identified in the risk assessment, thereby assisting the detection and prevention of money laundering. Such policies, procedures and controls must mitigate risk and be proportionate to the size of the firm. Depending on the size and nature of the firm, firms may need to appoint an officer responsible for compliance with the MLR 2017, carry out employee screening, and establish an independent audit function.
- *Customer due diligence.* The circumstances in which simplified due diligence is permissible are more restricted under the MLR 2017. Firms must consider risk when deciding whether to adopt simplified due diligence. Another major change is guidance on the circumstances in which enhanced due diligence should be undertaken and the creation of a "list" of high-risk jurisdictions.
- *Politically exposed persons.* Enhanced due diligence requirements must be applied to politically exposed persons (PEPs) in the UK and overseas. Broadly, these are defined as individuals who have been trusted with prominent public functions both in the UK and overseas.
- *Register of trust or company service providers.* HMRC must establish a register of trust or company service providers (TCSPs) that are not registered with the Financial Conduct Authority (FCA). This is not related to antiAML supervision – it is simply a register that may be publicly available. A firm must not act as a TCSP unless it is on or has applied to be on the register. We await further information from HMRC regarding the establishment of this register.
- *AML supervisors.* More guidance is included in the regulations regarding the role of AML supervisors, such as the IFA. There is an obligation for supervisors to provide risk-based guidance and update firms as new risks are identified. Supervisors will also have to approve the "beneficial owner, officer or manager of a firm" by 26 June 2018. The supervisor must grant approval unless the person has been convicted of a relevant offence in MLR 2017, Sch 3. An approval to act for a person is invalid if they have been convicted of a relevant offence or have subsequently been convicted of a relevant offence. If a person is convicted of relevant offence they have 30 days to inform the firm's AML supervisor from the date of conviction. The firm must also inform its AML supervisor within 30 days of the date of the conviction. The IFA and other professional bodies are in discussion with HM Treasury on

## FLAG IT UP

The National Crime Agency's National Strategic Assessment 2017 states that previous figures of £36bn to £90bn for all money laundering affecting the UK are a significant underestimation.

Money launderers employ a range of techniques to help legitimise the proceeds of crime, and professionals such as accountants and solicitors are at risk of being targeted for their services.

To tackle this threat, the Home Office, in partnership with the National Crime Agency, has been working with the accountancy and legal professional bodies to raise awareness of the warning signs of money laundering and help professionals protect themselves and their firms through the Flag It Up campaign. The aim of the IFA is to see its members staying vigilant in the vanguard of a campaign to combat money laundering, particularly when criminals seek to use accountancy practices as the conduit for such activity.

the details of the application process and will keep you updated.

## Risk and accountancy services

HM Treasury has published the 2017 update of the UK National Risk Assessment of Money Laundering and Terrorist Financing (NRA). The first version was published in 2015.

The NRA document has assessed that there is a high risk of accountancy services being exploited by criminals for money laundering. It concludes that certain accountancy services are attractive to criminals because they may use these to gain legitimacy, create corporate structures or enable value to be transferred.

As required by the MLR 2017, firms should use the information provided in the NRA to further strengthen and improve their AML procedures to mitigate the risk that they are exploited by criminals for money laundering.

Several high-risk areas for exploitation by money laundering were identified by the NRA.

- *Company formation and other company services.* The NRA assesses company formation and other company services as the service at highest risk of exploitation. The risk is greatest when company formation services are offered in conjunction with other accountancy services, to create complex corporate structures that conceal the true source of wealth or funds.
- *Company liquidation and associated services.* Criminals may mask the audit trail of money laundered through a company. The NRA does, however, recognise that the scope for abuse is limited by the regulatory framework for licensed insolvency practitioners.
- *Accountancy certification.* In many cases, underlying books and records have been falsified by criminals and the accountant has unwittingly legitimised the financial statements by preparing them. The accountant's "badge" on such financial statements is an outward sign of validation.
- *Misuse of client money accounts.* Client money accounts is one of the only ways that accountants handle client assets. The

## ➤ FURTHER INFORMATION

Office for Professional Body Anti-Money Laundering Supervision: [www.fca.org.uk/opbas](http://www.fca.org.uk/opbas)  
 HM Treasury's second National Risk Assessment of Money Laundering and Terrorist Financing: [tinyurl.com/ybxzkszo](http://tinyurl.com/ybxzkszo)  
 New draft guidance for the accountancy sector: [tinyurl.com/yycuov32](http://tinyurl.com/yycuov32)  
 Guidance on circumstances where there might be a high risk of money laundering and terrorist financing: [tinyurl.com/yaw3dehu](http://tinyurl.com/yaw3dehu)  
 Updated financial sanctions guidance and new reporting obligations: [tinyurl.com/ycdko7du](http://tinyurl.com/ycdko7du)  
 Flag It Up campaign: <https://flagitup.campaign.gov.uk>  
 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations SI 2017/692: [tinyurl.com/yclwbfbp](http://tinyurl.com/yclwbfbp)  
*Professional Conduct in Relation to Taxation Guidance*: [tinyurl.com/y832cjm5](http://tinyurl.com/y832cjm5)  
 Accountancy Affinity Group list of circumstances where there might be a high risk of money laundering or terrorist financing: [tinyurl.com/y93a2vwx](http://tinyurl.com/y93a2vwx)  
 IFA anti-money laundering UK law and guidance: [tinyurl.com/y9ohumng](http://tinyurl.com/y9ohumng)  
 The Office of Financial Sanctions Implementation: [tinyurl.com/gt63t28](http://tinyurl.com/gt63t28)  
 List of terrorist groups or organisations banned under UK law, and details of proscription criteria: [tinyurl.com/k6uz8m8](http://tinyurl.com/k6uz8m8)  
 Guidance on what to do on suspected breach of financial sanctions: [tinyurl.com/y8lvnhvk](http://tinyurl.com/y8lvnhvk)  
 The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017: [tinyurl.com/ydyoohg](http://tinyurl.com/ydyoohg)  
 IFA's public practice regulations: [tinyurl.com/mxbbe5w](http://tinyurl.com/mxbbe5w)

NRA concludes that there is a risk posed by accountants performing high-value financial transactions for clients with no clear business rationale. This allows criminals to transfer funds through client money accounts.

- *The facilitation of tax evasion.* Law enforcement agencies have found that accountancy services are used to undertake tax evasion and VAT fraud. Members in practice can mitigate the risk of facilitating tax evasion by adhering closely to the guidance in the *Professional Conduct in Relation to Taxation Guidance* (PCRT).

The MLR 2017 require the IFA to make available any information relevant to the firm's own organisation-wide risk assessment. We, together with the other AML supervisors that comprise the Accountancy Affinity Group, have identified a list of circumstances when there might be a high risk of money laundering or terrorist financing.

### AML guidance for the accountancy sector

The guidance that sets out the profession's expectations in terms of members' compliance with the MLR 2017 has been drafted and is awaiting HM Treasury approval. It is our understanding that we are moving ever closer to a final HM Treasury-approved version, so watch this space. In the meantime, the draft guidance is available on our website ([tinyurl.com/y9ohumng](http://tinyurl.com/y9ohumng)).

### Updated sanctions guidance

The Office of Financial Sanctions Implementation (OFSI) was formed as part of HM Treasury to oversee the implementation and enforcement of domestic and international financial sanctions in the UK. Sanctions are used for several purposes and this includes putting pressure on a particular country or regime to change their behaviour and to prevent terrorist financing.

The financial sanctions regimes in force in the UK include country-based regimes, as well as those directed at terrorist organisations. The OFSI website provides details of all the current financial sanctions regimes in force along with guidance ([tinyurl.com/gt63t28](http://tinyurl.com/gt63t28)). It is possible to subscribe to receive updates when sanctions are updated.

The IFA would recommend undertaking sanctions checks and proscribed terrorist checks published by the Home Office ([tinyurl.com/k6uz8m8](http://tinyurl.com/k6uz8m8)) as part of customer due diligence procedures of the firm.

### New reporting obligations

The MLR 2017 include various new reporting obligations as follows.

#### Financial Sanctions breaches

All businesses, organisations and individuals now have an obligation to report information about sanctions breaches. A report must be made to the OFSI as soon as practicable if there is knowledge of, or reasonable cause to suspect, that a person:

- is subject to financial sanctions; or
- has committed an offence under the regulations.

The OFSI has updated its *Guide to Financial Sanctions* to help individuals and businesses understand what they should report and when. There is a standard template that must be used which is also available on its website ([tinyurl.com/y8lvnhvk](http://tinyurl.com/y8lvnhvk)). Members should also be aware that making a suspicious activity report (SAR) to the NCA does not remove the requirement to make a report to the OFSI.

### The suspicious activity report regime

Changes introduced by the Criminal Finances Act 2017 allow law enforcement authorities to put a transaction "on hold" for an additional six months while disclosed matters on a SAR are investigated. If a law enforcement agency applies to the Crown Court to extend the moratorium period, notice of the application must be served on the firm that made the SAR.

Once in receipt of notice of an application to extend the moratorium period a firm will be able to inform its customer/client of the existence of the application to extend the moratorium period without committing the tipping off offence. The firm is permitted to disclose "only such information as is necessary for the purposes of notifying the customer or client that an application...has been made". It must follow, therefore, that the firm cannot disclose the content of the SAR to the client, or even the basis for its suspicion.

### New regulatory body

The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) is a new regulator set up by the government on 18 January 2018 to improve consistency of professional body AML supervision in the accountancy and legal sectors. OPBAS will be funded by the professional bodies it supervises but will not directly supervise legal and accountancy firms. OPBAS is housed within the FCA and will facilitate collaboration and information sharing between the professional body AML supervisors, statutory supervisors, and law enforcement agencies ([www.fca.org.uk/opbas](http://www.fca.org.uk/opbas)).

### What firms should do

Accountancy practices can mitigate the risk that a criminal will use it to launder money by complying with the requirements of the MLR 2017, completing the IFA membership returns and firm returns for those engaged in public practice, and adhering to the requirements included in the IFA's public practice regulations ([tinyurl.com/mxbbe5w](http://tinyurl.com/mxbbe5w)), in particular for client money accounts. Firms should remember that payments into and out of the firm's client bank account must relate to an accountancy service that is being (or has been or will be) provided by the firm.

Further, firms should keep up to date with updates and requirements in this area to avoid becoming unwittingly involved in money laundering which exposes members, the MLRO, and their firm to criminal prosecution or disciplinary action as well as bringing disrepute to the IFA and the accountancy profession.