

Key changes

Anne Davis provides the latest news on anti-money laundering.

TEN SECOND SUMMARY

- 1 This regulatory update provides an update of the key changes in the anti-money laundering and counter-terrorist finance regime.
- 2 Criminal record checks and HMRC's Trust or Company Service Providers (TCSP) Register.
- 3 The new Anti-Money Laundering Directive and IFA and other resources.



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Since 26 June 2018, all member firms that we supervise for compliance with the Money Laundering Regulations 2017 (MLR 2017 – tinyurl.com/IFA-AMLregs) must take reasonable care to ensure no-one is appointed, or continues to act, as a beneficial owner, officer or manager (BOOM) without the IFA's approval (tinyurl.com/IFA-CrimRecChk). We can only approve a BOOM if they have no relevant unspent criminal convictions. To do this, we require all BOOMs to obtain criminal record check certificates and we will need to see copies of these at your next AML monitoring visit. For further information visit www.ifa.org.uk.

If you have any queries on criminal records checks, please contact the compliance team at compliance@ifa.org.uk.

HMRC's TCSP register

The money laundering regulations require HMRC to keep a register of all firms that act as a trust or company service provider (TCSP) if they are not already registered with the Financial Conduct Authority (FCA). Firms that are not on HMRC's TCSP register, but provide these services, may be subject to criminal or civil proceedings, including disciplinary action by the IFA.

Based on returns and information, we have notified HMRC of all the IFA member firms that provide trust or company services. Those who perform TCSP work – who or are considering providing these types of services in the near future and have not informed us – should contact the compliance team at compliance@ifa.org.uk as soon as possible.

Please note that being on HMRC's TCSP Register does not affect your supervisor for AML compliance. We will continue to be your supervisor

unless you have informed us to the contrary. There is no charge for being on the HMRC TCSP register.

Further information on this is available at: tinyurl.com/IFA-tscpReg.

New anti-money laundering directive

A recent vote at the European Parliament (tinyurl.com/EC5MLD) has resulted in a fifth update to the EU's Anti-Money Laundering Directive (5MLD). In part, this is a response to the terrorist attacks of 2015 and 2016 in Paris and Brussels, as well as the Panama Papers leaks, and comes less than a year after the fourth anti-money laundering directive (4MLD) was embedded into national laws across the EU.

The update is designed to bring transparency to improve the fight against money laundering and terrorist financing in the following ways.

- *Improving transparency on the real owners of companies.* The beneficial ownership registers for legal entities, such as companies, will be public. This wider access to part of the beneficial ownership information will enhance public scrutiny and will contribute to preventing the misuse of legal entities for money laundering and terrorist financing purposes.
- *Better connection of the beneficial ownership registers.* The national registers on beneficial ownership information will be interconnected directly to facilitate cooperation and exchange of information between member states. In addition, member states will have to put in place verification mechanisms of the beneficial ownership information collected by the registers to help improve the accuracy of the information and the reliability of these registers. These reforms could help reduce money laundering through the use of letterbox

companies set up to hide wealth and avoid paying taxes, a practice which received widespread attention in the wake of the Panama Papers.

- *Improving transparency on trusts.* The access to data on the beneficial owner of trusts will be accessible without any restrictions to competent authorities, FIUs and the professional sectors subject to anti-money laundering rules such as accountants and will be accessible to other persons who can demonstrate a legitimate interest. In addition, when a trust is a beneficial owner of a company, access to this information can be requested via a written request.
- *Extending anti-money laundering and counter financing of terrorism rules to virtual currency exchanges, wallet providers and letting intermediaries where monthly rent is more than €10,000.* Member states will have the possibility to allow the anonymous use of electronic money products only when customers:
 - use a pre-paid instrument (such as pre-paid cards) directly in the shop for a maximum transaction amount of €150; and
 - carry out an online transaction with a pre-paid card below €50. The new measures also address risks linked to pre-paid cards and virtual currencies. In a bid to end the anonymity associated with virtual currencies, virtual currency exchange platforms and custodian wallet providers will, like accountants, have to apply customer due diligence controls, including customer verification requirements. These platforms and providers will also have to be registered.
- *Improving checks on transactions involving high-risk third countries.* Member states will have to ensure that the sectors dealing with countries presenting strategic deficiencies in their anti-money laundering and counter financing of terrorism regimes listed by the European Commission apply systematic enhanced controls on the financial transactions from and to these countries. The list of checks is now harmonised to ensure there are no loopholes in the EU. In addition, the listing of the Commission will include third countries with low transparency on beneficial ownership information, no appropriate and dissuasive sanctions or which do not cooperate nor exchange information.

Other measures

Other measures agreed as part of the update include:

- tougher criteria for assessing whether non-EU countries pose an increased risk of money laundering and closer scrutiny of transactions involving nationals from risky countries (including the possibility of sanctions);
- protection for whistle-blowers who report money laundering (including the right to anonymity);

- all self-regulatory bodies such as the IFA will need to issue an annual report about their compliance monitoring and detected AML breaches; and
- public bodies will need to issue information on the AML risks they have identified, and what their response has been.

The timeline for implementing these changes into our national legislation will be around 18 months. It is our understanding from HM Treasury that we should be expecting a consultation on the 5MLD sometime in early 2019 and that the directive will be transposed into UK legislation in early 2020.

Further information on the directive is available from the Accountancy Europe factsheet (tinyurl.com/5AMLDire).

Professional money laundering

The Financial Action Task Force (FATF) has recently produced a report, *Professional Money Laundering* (tinyurl.com/FATFReport), which looks at how individuals, organisations and networks, known as professional money launderers (PMLs), are charging fees or commission for providing a money laundering service to criminals.

The report aims to describe the functions and characteristics that define “professional” money launderers who are involved in third-party laundering for a fee or commission. PMLs may act in a professional capacity as an accountant and serve some legitimate clients, as well as serving criminal clients.

PMLs are rarely involved in the illegal activities which generate the proceeds. Instead, they provide expertise to disguise the nature, source, location, ownership, control, origin and/or destination of funds to avoid detection, usually involving many jurisdictions.

The services offered will usually be in the form of a menu of generally applicable services, which will follow well-practised laundering techniques, and could include the following methods:

- Consulting and advising.
- Registering and maintaining companies or other legal entities.
- Serving as nominees for companies and accounts.
- Providing false documentation.
- Commingling legal and illegal proceeds.
- Placing and moving illicit cash.
- Purchasing assets.
- Obtaining financing.
- Identifying investment opportunities.
- Indirectly purchasing and holding assets.
- Orchestrating lawsuits.
- Recruiting and managing money mules.

The report makes recommendations including concerted law enforcement and supervisory action at the national level, appropriate regulation and effective international co-operation and information exchange.

IFA AML CHECKLIST

To help IFA members meet their obligations under the MLR 2017, we have developed an anti-money laundering checklist. This checklist covers policies, controls and procedures, awareness and training, record keeping, firm's risk assessment of money laundering or terrorist financing risks, client due diligence (CDD), reporting, supervision and monitoring requirements under the regulations. See: tinyurl.com/IFA-AMLcheck

Defence against money laundering requests

The National Crime Agency (NCA) has issued *Defence Against Money Laundering Frequently Asked Questions* (DAML FAQ). The FAQs offer practical guidance to accountants applying for a consent from the NCA for undertaking transactions involving suspected criminal property. The NCA will aim to review the content of these FAQs following the introduction of new legislation, regulations and crime trends. Further information is available at: tinyurl.com/DAMLfaqs

Suspicious activity reports

Further guidance on submitting suspicious activity reports (SARs) to the National Crime Agency is available at: tinyurl.com/ElecSARrep

FURTHER INFORMATION

IFA AML compliance – free webinar

A free recorded webinar provides an overview of the legal and regulatory framework, examples of vulnerabilities facing the accountancy profession and some practical day-to-day requirements for robust anti-money laundering operations. Register to view the free webinar at www.ifa.org.uk/amlwebinar.