

## **PART V - IV      PROFESSIONAL PRACTICE – MONEY LAUNDERING**

### **What about the Money Laundering Regulations?**

The simplification of this Rule, dealing with money laundering, is intended to make it easier to manage for practising solicitors.

The Money Laundering Regulations, which came into force on 1st April 1994, apply to all aspects of a solicitor's work, whenever clients' money is being handled.

The Regulations are intended to prevent the proceeds of unlawful activities, such as Inland Revenue and Customs & Excise frauds, drug trafficking and terrorism, being legitimised by being applied to carry out legitimate transactions.

The scope of the Regulations is such that almost every aspect of a solicitor's normal workload may be affected by the need to introduce anti-money laundering procedures within the firm.

#### **(Rule 24)**

*To what do the Regulations apply?*

- to transactions which involve the payment by or to or on behalf of the client of an amount of €15,000 (currently approximately £9,000) or more, and to any amounts 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 that a transaction is being carried out on behalf of someone else who is engaged in money laundering;
- to every case where the firm forms or resolves to form a business relationship.

The terms "relevant financial business", "business relationship" and "one-off transaction" are defined in the Regulations. The definitions are wide and any transaction which involves the **handling/handling** of money of €15,000 or more, is likely to be subject to the Money Laundering Regulations.

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

Solicitors 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. The following general comments may be helpful:-

- a. **Conveyancing.** In both purchase and sale property transactions, consideration needs to be given to the proper identification of clients and source of incoming funds. This is particularly important when a purchase of property is being contemplated. If funds are being received from the identified client's own bank account, then no further checks are necessary.

Any changes to this 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 a property in nominee name for the benefit of an undisclosed principal also requires to be considered carefully to ensure that an official owner is properly identified.

Ownership of heritable property and land 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 money launderers.

The simple step of providing funds as a deposit for a substantial conveyancing transaction, then cancelling the project and seeking recovery of the funds to a third party's nominated account is another a popular device to use the solicitor to achieve the money launderer's ends.

- b. **Trusts and Offshore Investment Vehicles.** 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. 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 crime and would fall foul of the Money Laundering Regulations.
- c. **Executives.** This is much less likely to be an area of concern. 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.
- d. **Investment Business.** This is specifically caught under the Money Laundering Regulations and must always be handled with particular care.
- e. **Matrimonial and Family Work.** The placing of funds in the name of a spouse or children is common place. First stage enquiry regarding such arrangements should always be made and a proper note of any explanation given should be included in the file.

*Why am I a target for money launderers?*

Solicitors should always be conscious of the real benefits to money launderers of having funds passed through a solicitors' client bank account on the way to the next level, since solicitors' funds are deemed to have been thoroughly vetted on receipt. 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.

*How can I minimise these risks?*

In all circumstances you should make a full note of your enquiry and answers in connection with client identification and source of funds. Remember this involves a two-stage check of both clients and their money. 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 when investigations are being carried out under the proceeds of crime legislation.

*What do I have to do under the Regulations?*

- verify the identity of every person with whom you intend to form a business relationship, or carry out a one-off transaction;
- maintain record keeping procedures showing details of all transactions for each client;
- implement internal reporting procedures.

*Do I have to identify clients?*

Yes – if satisfactory evidence of the identity of new clients is not obtained then the business relationship or one-off transaction, as the case may be, shall not proceed any further.

*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 establishes that the client is the person he claims to be.

For **individual clients** it is suggested you obtain:-

- the true name and/or names used;
- current permanent address, including postcode;
- “wherever possible” the date and place of birth;
- a document from a reputable 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 should be requested and the number recorded.

other suggestions:-

- check the voters’ roll;
- make a credit reference agency search;
- see an original recent electricity, gas, telephone, council tax bill or bank statement;
- check a local telephone directory;
- visit the client’s home.

For **corporate clients** no specific steps are needed if clients are:-

- a listed company or a subsidiary of a listed company;
- a private company or partnership, one or more of whose directors/partners are already known to the firm.

Steps are needed if clients are:-

an unquoted company or a partnership and none of the directors/partners is already known, then the firm should verify the identity of one or more of the principal directors/partners and/or shareholders as applicable as if they were individual clients (see above).

It is suggested copies are obtained of:-

- Certificate of Incorporation/Certificate of Trade or equivalent;
- and perhaps for companies their latest report and accounts (audited where applicable).

*How do I decide whether I need to comply and also identify new clients?*

Common sense.

However, if in doubt there is a style of Verification of Identity Flowchart and an Evidence of Identity form at Schedule III - II.

*What checks should be made on client funding?*

You should check the source of funds by discussing the client’s plans to fund the transaction. Any monies due to be paid to you by the client should be sourced to a UK bank account in the client’s own name, wherever possible. Place a copy of the client’s cheque in the file as part of your file records.

*What if the funds are not drawn on the client's own bank account?*

There is a simple flowchart at Schedule III - III. 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.** Identify any third party who is funding the transaction.

*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 source. Record the explanations and your reasons for being satisfied in the particular circumstances.

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

In the case of new clients, remember the basic requirement to know your client. Financial position, other business interests, property ownership are all important, i.e. more than just the specific business being brought to you.

WARNING SIGNS—

- An address c/o a third party
- Mobile phone line as only contact
- No contact address
- Evasive answers or a failure to answer your questions.
- Delays in producing funds and/or
- Switching the source of funds
- Being asked to hold substantial funds without a clear purpose
- Being asked to issue the client funds for a different purpose – such as buying expensive cars, boats or other luxury items which do not need a solicitor to be involved in the normal course of business.

ALSO – watch out for sudden affluence on the part of existing clients or being asked to participate in creating tax planning structures where tax evasion may be a factor.

*Any other advice about what constitutes a suspicious transaction which should be reported to the Money Laundering Reporting Officer?*

Always take time to look at the big picture as far as your clients are concerned. If you have any cause for concern, review the file and discuss with the MLRO. At Schedule III - I there are some examples of money laundering transactions taken from real cases. Information about foreign jurisdictions with high risk assessments as identified by Financial Action Tax Force publications can be found on the Society's website. These will be updated and available on – [www.lawscot.org.uk](http://www.lawscot.org.uk)

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

The evidence of identity needs to be kept for at least five years from completion of the relevant business or transaction concerned. This can either be contained in a fact sheet in each file or alternatively in a central record, filed in such a way as to make future reference possible.

*Do I have to have a Money Laundering Reporting Officer?*

Yes.

*What do I have to tell the Money Laundering Reporting Officer?*

Any information or other matter which comes to the attention of the person handling relevant financial business, which in the opinion of the person handling that business gives rise to a knowledge or suspicion of money laundering.

*What does the Money Laundering Reporting Officer have to do?*

Consider all such reports and any other relevant information and decide whether this gives rise to a knowledge or suspicion of money laundering. If so, that information should be passed to the NCIS (the National Criminal Intelligence Service).

*How should this information be passed?*

Use the style of form at Schedule III - IV.

In serious cases telephone or fax the NCIS for guidance on how to proceed with a suspicious transaction.

Telephone: 0207 238 8274

Fax: 0207 238 8286

*What else should the MLRO do?*

Keep a record of what he/she decides to do and why.

*What happens if I do not comply?*

Failure to comply with the Regulations constitutes a criminal offence, punishable by a fine and/or imprisonment for a term of up to two years.