

MONEY LAUNDERING

An introduction to the UK's regime

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You may think that you know what money laundering is. You may even think that it is something that you will never be involved in, knowingly or otherwise. Surely, it's a criminal offence to launder money and you'd clearly know if you were involved in that type of activity?

Definition

Money laundering is the process whereby the beneficiaries of criminal proceeds undertake transactions using those proceeds to try and legitimise them – so that they can point back to a legal transaction and say “that's where I got the money from”, rather than “I stole it from a bank”.

The process involves passing the proceeds of crime through a series of transactions to obscure where the money may have originally come from. The money that comes out from those transactions (for example, by way of a refund or proceeds of sale from property/goods brought with “dirty” money) is then said to be “clean” or “laundered” and, should anyone inquire about it, the beneficiary can point back to evidence of the “laundering” transaction as evidence as to where that money has come from.

The UK's anti-money laundering (AML) system is aimed at preventing criminals from enjoying the financial benefits of their crimes. It is not about preventing those crimes, but about minimising the financial incentive in committing them by attempting to make it as difficult as possible for a criminal to spend their ill-gotten gains. This is achieved by effectively criminalising those who assist criminals in laundering the proceeds.

The current AML system is (in part) administered under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017).

MLR 2017 is aimed at preventing certain professional services being used for money laundering and does so by placing an onus on professionals to know and monitor their customers. It is expected that such services will “get to know” their customers through customer due diligence exercises (the most common of which – identity checks – will be familiar to anyone who has had to deal with a solicitor, bank or estate agent).

The MLR 2017 applies to particular professional services operating in the UK, namely:

- Credit Institutions;
- Financial Institutions;
- Auditors, Insolvency Practitioners, External Accountants and Tax Advisers;
- Independent Legal Professionals;
- Trust or Company Service Providers;
- Estate Agents, Land Agents and Chartered Surveyors;
- High Value Dealers;
- Casinos; and,
- Auction platforms.

Relevance in the area of rural practice

The definitions of these professional services are set out in regs.10-14. Of interest to the ALA and its members are the following definitions:

Auditors, Insolvency Practitioners, External Accountants and Tax Advisers

An Auditor is defined as a firm or individual who:

- (a) is a statutory Auditor within the meaning of Pt.42 Companies Act 2006;
- (b) when carrying out statutory audit work within the meaning of s.1210 Companies Act 2006;
- (c) a local Auditor within the meaning of s.4(1) Local Audit and Accountability Act 2014, when carrying out an audit required under that Act.

An Insolvency Practitioner is defined as being a firm or sole practitioner who acts as an Insolvency Practitioner within the meaning of s.388(c) Insolvency Act 1986 (or art.3 Insolvency (Northern Ireland) Order 1989).

An external Accountant is defined as being a sole practitioner or firm who (in the course of a business) provides accountancy services to other persons, when providing those services.

A Tax Adviser is (again) a firm or sole practitioner who provides (in the course of a business) advice on the tax affairs of other persons, when providing those services.

Independent Legal Professionals

Interestingly, not all law firms meet the definition contained within the MLR 2017.

This provides the definition of an Independent Legal Professional as being a firm or sole practitioner who provides (by way of a business) 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) Managing client money, securities or other assets;
- (c) Opening or managing bank, savings or securities accounts;
- (d) Organising contributions necessary for creating, operating or managing companies; and,
- (e) Creating, operating or managing trusts, companies, foundations or similar structures.

Note that the definition in (b) is narrower than simply “handling” client monies and the definition in (c) is wider than simply opening a solicitor's client account.

“Systems need to be put in place to enable firms or individuals to risk assess their business and transactions and identify transactions of concern and report to the relevant authorities where they identify suspicious activity”

Trust or Company Service Providers

This is a firm or sole practitioner who (in the course of a business) provides the following services:

- (a) Forming companies or other legal entities;
- (b) Acting, or arranging for others to act:
 - (i) as a director or secretary of a company;
 - (ii) as a partner of a partnership; or
 - (iii) in a similar capacity in relation to other legal entities.
- (c) Provision of a registered office, business address, correspondence or administrative address (or related services) for a company, partnership or other legal entity 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.

Estate Agents, Land Agents and Chartered Surveyors

Estate Agents are defined as sole practitioners or firms who carry out estate agency work – as per s.1 Estate Agents Act 1979. However, references in that Act to the disposing of or acquiring an estate or interest in land are to be taken to include land or estates outside of the UK where that estate or interest is capable of being owned or held as a separate interest.

Land Agents and Chartered Surveyors who do not provide estate agency services are not within the purview of the MLR 2017 but all those who do, even if only occasionally, are.

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High Value Dealers

This is a firm or sole trader who by way of business trades in goods, when the trader makes or receives in respect of any transaction payment (or payments) at least €10,000 in total when executing a single, or several linked, transactions. The definition includes Auctioneers, dealing in goods which would include livestock or machinery.

Auction Platform

A platform which auctions two-day or five-day futures, within the meanings given by arts.3.4 and 3.5 of EU Regulation 1031/2010 (the Emission Allowance Auctioning Regulation – EAAR), when it carries out activities covered by the EAAR.

Practical considerations

So, what in practice does it mean if you are one of the entities regulated by the MLR 2017? These are entities that the EU (and the UK Government) has identified as being at risk from criminals attempting to use to launder their ill-gotten gains.

In the case of a Solicitor, a common risk is that an individual will attempt to pay “dirty” money into a client account – and

then later obtain a refund from that account as an attempt to launder that money.

If you are an Estate Agent, then a common risk is (similar to High Value Dealers and Auction Platforms) that ill-gotten funds will be used to purchase property and goods, which will later be sold (if not used for the criminal’s own benefit) to enable him to launder money.

If you do not carry out sufficient due diligence, certain Regulators such as the RICS and the Law Society (defined under reg.7 and sch.1 MLR 2017) will oversee and provide guidance on what is expected of you to establish who your client is and in some instances where their money has come from and to report on any suspicious activity, you can be considered to be culpable in assisting criminals to launder funds and thereby guilty of an offence.

To avoid getting caught up in inadvertent offending, it is important to recognise that as a business or individual working in services caught under MLR 2017 you must take steps to ensure you do not become involved in money laundering.

This is not as straight forward as it may sound, because the UK’s AML regime applies to **any** criminal offending and not just proceeds from drugs or theft which are arguably easier to identify than the proceeds derived from more sophisticated and/or cross-jurisdictional offending. On that basis systems need to be put in place to enable firms or individuals to risk assess their business and transactions and identify transactions of concern and report to the relevant authorities where they identify suspicious activity.

If you are an individual or business who or which is subject to the MLR 2017, you would be well advised to check your procedures and seek guidance, if needs be, from your supervising authority or relevant professional body under sch.1 MLR 2017.

As with anything of concern with the UK’s AML regime – if you are unclear of your obligations you must seek clarity from someone who can provide it. The risks to your personal and/or professional life and business are too great not to do so.

