



The Money Laundering and Terrorist Finance (Amendment) Regulations 2019

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Background

2015 EU's 4th Money Laundering Directive.

2016 Panama Papers.

2017 EU Supranational Risk Assessment.

2017 Regulations – Implement EU's 4th Money Laundering Directive.

2018 EU's 5th Money Laundering Directive.

2019 Regulations.

2020 – 10th January, in force.

Approach of the regulators

SRA News Release 10th January 2020

There has been a short lead in time between the regulations being laid in Parliament on 20th December, and the legislation coming into force. However, the legislation requires firms to be compliant from today. We will take the limited time that firms have had to prepare for the new requirements into account in our enforcement work.

Law Society of Scotland 10th January 2020

The legislation requires firms to be compliant with effect from the 10th January 2020 but there has been a short lead in time between the regulations being laid in Parliament on 20th December and the legislation coming into force. The Law Society recognises this and will take a proportionate and risk-based approach to non-compliance after this date.

Regulation 4(9)(a) – Complex or unusually large

4(9) In Regulation 19(4) (policies, controls and procedures)—

(a) in sub-paragraph (a)(i), for “and” in sub-paragraph (aa) and for “and” after that sub-paragraph substitute “or”

Revised Regulation 19(4)(a)

(4) The policies, controls and procedures referred to in paragraph (1) must include policies, controls and procedures—

(a) which provide for the identification and scrutiny of—

(i) any case where—

(aa) a transaction is complex or unusually large, or there is an unusual pattern of transactions, or

(bb) the transaction or transactions have no apparent economic or legal purpose, and

(ii) any other activity or situation which the relevant person regards as particularly likely by its nature to be related to money laundering or terrorist financing;

Regulation 4(9)(b) – New technology

Revised Regulation 19(4)(c)

(4) The policies, controls and procedures referred to in paragraph (1) must include policies, controls and procedures—

(c) which ensure that when new products, new business practices (including new delivery mechanisms) or new technology are adopted by the relevant person, appropriate measures are taken in preparation for, and during, the adoption of such products, practices or technology to assess and if necessary mitigate any money laundering or terrorist financing risks this new product, practice or technology, may cause;

Regulation 4(10) – Sharing information within the group

Revised Regulation 20(1)(b)

20.— (1) A relevant parent undertaking must—

(a) ensure that the policies, controls and procedures referred to in regulation 19(1) apply—

(i) to all its subsidiary undertakings, including subsidiary undertakings located outside the United Kingdom; and

(ii) to any branches it has established outside the United Kingdom;

which is carrying out any activity in respect of which the relevant person is subject to these Regulations;

(b) establish and maintain throughout its group the policies, controls and procedures for data protection and sharing information for the purposes of preventing money laundering and terrorist financing with other members of the group, including policies on the sharing of information about customers, customer accounts and transactions;

Regulation 4(11) – Training agents

Revised Regulation 24(1)

24.— (1) A relevant person must—

(a) take appropriate measures to ensure that its relevant employees and any agents it uses for the purposes of its business whose work is of a kind mentioned in paragraph (2), are—

(i) made aware of the law relating to money laundering and terrorist financing, and to the requirements of data protection, which are relevant to the implementation of these Regulations; and

(ii) regularly given training in how to recognise and deal with transactions and other activities or situations which may be related to money laundering or terrorist financing;

(b) maintain a record in writing of the measures taken under sub-paragraph (a), and in particular, of the training given to its relevant employees and to any agents it uses for the purposes of its business whose work is of a kind mentioned in paragraph (2);

Regulation 5(1)(c) – Renewing CDD on existing clients

Revised Regulation 27(8)

(8) A relevant person must also apply customer due diligence measures—

(za) when the relevant person has any legal duty in the course of the calendar year to contact an existing customer for the purpose of reviewing any information which—

(i) is relevant to the relevant person’s risk assessment for that customer, and (ii) relates to the beneficial ownership of the customer, including information which enables the relevant person to understand the ownership or control structure of a legal person, trust, foundation or similar arrangement who is the beneficial owner of the customer;

(zb) when the relevant person has to contact an existing customer in order to fulfil any duty under the International Tax Compliance Regulations 2015(1);”.

Regulation 5(2) – Understanding ownership of a legal person

New Regulation 28(3A)

(3A) Where the customer is a legal person, trust, company, foundation or similar legal arrangement the relevant person must take reasonable measures to understand the ownership and control structure of that legal person, trust, company, foundation or similar legal arrangement;

Regulation 5(2)(b) – Recording Steps taken

(7) This paragraph applies if (and only if) the relevant person has exhausted all possible means of identifying the beneficial owner of the body corporate and—

(a) has not succeeded in doing so, or

(b) is not satisfied that the individual identified is in fact the beneficial owner.

(8) If paragraph (7) applies, the relevant person must—

(a) keep records in writing of all the actions it has taken to identify the beneficial owner of the body corporate;

(b) take reasonable measures to verify the identity of the senior person in the body corporate responsible for managing it, and keep records in writing of—

(i) all the actions the relevant person has taken in doing so, and

(ii) any difficulties the relevant person has encountered in doing so.

Regulation 5(2)(c) – Electronic Verification

New Regulation 28(19)

(19) For the purposes of this regulation, information may be regarded as obtained from a reliable source which is independent of the person whose identity is being verified where—

(a) it is obtained by means of an electronic identification process, including by using electronic identification means or by using a trust service (within the meanings of those terms in Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23rd July 2014 on electronic identification and trust services for electronic transactions in the internal market (2)); and

(b) that process is secure from fraud and misuse and capable of providing an appropriate level of assurance that the person claiming a particular identity is in fact the person with that identity.”.

Regulation 5(3) – Reporting Discrepancies

30A.— (1) Before establishing a business relationship with—

(a) a company which is subject to the requirements of Part 21A of the Companies Act 2006 (information about people with significant control) (3),

(b) an unregistered company which is subject to the requirements of the Unregistered Companies Regulations 2009(4),

(c) a Limited Liability Partnership which is subject to the requirements of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009(5), or

(d) an eligible Scottish partnership which is subject to the requirements of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017(6),

a relevant person must collect proof of registration or an excerpt of the register from the company, the unregistered company or the Limited Liability Partnership (as the case may be) or from the registrar (in the case of an eligible Scottish partnership).

Regulation 5(3) – Reporting Discrepancies

(2) The relevant person must report to the registrar any discrepancy the relevant person finds between information relating to the beneficial ownership of the customer—

(a) which the relevant person collects under paragraph (1); and

(b) which otherwise becomes available to the relevant person in the course of carrying out its duties under these Regulations.

(3) The relevant person is not required under paragraph (2) to report information which that person would be entitled to refuse to provide on grounds of legal professional privilege in the High Court (or in Scotland, on the ground of confidentiality of communications in the Court of Session).

Regulation 5(3) – Reporting Discrepancies

When and How?

As soon as practicable – LSAG Note - <https://www.lawsociety.org.uk/policy-campaigns/articles/anti-money-laundering-guidance/>

Companies House Guidance - <https://www.gov.uk/guidance/report-a-discrepancy-about-a-beneficial-owner-on-the-psc-register-by-an-obliged-entity>

Regulation 5(4)(a), (c) & (d) – High Risk Third Country

- Afghanistan
- Bosnia and Herzegovina
- Democratic People's Republic of Korea
- Ethiopia
- Guyana
- Iran
- Iraq
- Lao PDR

- Pakistan
- Sri Lanka
- Syria
- Trinidad and Tobago
- Tunisia
- Uganda
- Vanuatu
- Yemen

Regulation 5(4)(a), (c) & (d) – High Risk Third Country

Revised Regulation 33(1)(b)

(b) in any business relationship with a person established in a high-risk third country or in relation to any relevant transaction where either of the parties to the transaction is established in a high-risk third country;

Regulation 5(4)(a), (c) & (d) – High Risk Third Country

Revised Regulation 33(3)

(3) For the purposes of paragraph (1)(b)—

(a) a “high-risk third country” means a country which has been identified by the European Commission in delegated acts adopted under Article 9.2 of the fourth money laundering directive as a high-risk third country;

(b) a “relevant transaction” means a transaction in relation to which the relevant person is required to apply customer due diligence measures under Regulation 27;

(c) being “established in” a country means—

(i) in the case of a legal person, being incorporated in or having its principal place of business in that country, or, in the case of a financial institution or a credit institution, having its principal regulatory authority in that country; and

(ii) in the case of an individual, being resident in that country, but not merely having been born in that country.

Regulation 5(4)(a), (c) & (d) – High Risk Third Country

New Regulation 33(3A)

(3A) The enhanced due diligence measures taken by a relevant person for the purpose of paragraph (1)(b) must include—

(a) obtaining additional information on the customer and on the customer's beneficial owner;

(b) obtaining additional information on the intended nature of the business relationship;

(c) obtaining information on the source of funds and source of wealth of the customer and of the customer's beneficial owner;

(d) obtaining information on the reasons for the transactions;

(e) obtaining the approval of senior management for establishing or continuing the business relationship;

(f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.

Regulation 5(4)(b) – “Or” instead of “and”

Revised Regulation 33(1)(f)

33(1) A relevant person must apply enhanced customer due diligence measures and enhanced ongoing monitoring, in addition to the customer due diligence measures required under Regulation 28 and, if applicable, Regulation 29, to manage and mitigate the risks arising—

(f) in any case where—

(i) a transaction is complex or unusually large,

(ii) there is an unusual pattern of transactions, or

(iii) the transaction or transactions have no apparent economic or legal purpose, and;

Regulation 5(4)(f) – Additional factors where EDD may be required

Revised Regulation 33(6)(a) & (b)

(6) When assessing whether there is a high risk of money laundering or terrorist financing in a particular situation, and the extent of the measures which should be taken to manage and mitigate that risk, relevant persons must take account of risk factors including, among other things—

(a) customer risk factors, including whether—

(i) the business relationship is conducted in unusual circumstances;

(ii) the customer is resident in a geographical area of high risk (see sub-paragraph (c));

(iii) the customer is a legal person or legal arrangement that is a vehicle for holding personal assets;

(iv) the customer is a company that has nominee shareholders or shares in bearer form;

(iv) the customer is a business that is cash intensive; (v) the corporate structure of the customer is unusual or excessively complex given the nature of the company's business;

Regulation 5(4)(f) – Additional factors where EDD may be required

(vi) the customer is the beneficiary of a life insurance policy;

(vii) the customer is a third country national who is applying for residence rights in or citizenship of an EEA state in exchange for transfers of capital, purchase of a property, government bonds or investment in corporate entities in that EEA state;

(b) product, service, transaction or delivery channel risk factors, including whether—

(i) the product involves private banking;

(ii) the product or transaction is one which might favour anonymity;

(iii) the situation involves non-face-to-face business relationships or transactions, without certain safeguards, such as an electronic identification process which meets the conditions set out in Regulation 28(19);

(iv) payments will be received from unknown or unassociated third parties;

(v) new products and new business practices are involved, including new delivery mechanisms, and the use of new or developing technologies for both new and preexisting products; (vi) the service involves the provision of nominee directors, nominee shareholders or shadow directors, or the formation of companies in a third country;

(vii) there is a transaction related to oil, arms, precious metals, tobacco products, cultural artefacts, ivory or other items related to protected species, or other items of archaeological, historical, cultural or religious significance or of rare scientific value;

Summary

1. Amend policies
2. Review Risk Assessment (firm and matter)
3. Training and communication
4. Look out for the updated Guidance

Lockton philosophies

- Be committed to the highest standards of excellence in everything we do
- Practice the Golden Rule, and sustain a highly ethical, moral and caring culture
- Recognise our associates as our most valuable assets
- Provide the opportunity and support that allows associates to grow, improve and achieve their ultimate potential
- Recognise and substantially reward exemplary associate performance
- Respect, value and nurture each client and carrier relationship



Thank you

