



Advanced Anti-Money  
Laundering for Professionals  
Lockton Webinar in conjunction  
with Ashfords LLP  
Thursday 3<sup>rd</sup> March 2016

Eligible for 1hr CPD

# Speakers



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Over 25 years extensive experience of professional conduct and professional risks in private practice and has also led the Solicitors' Regulation Authority's Financial Stability Programme for the last 3 years.

Led the SRA's Anti-Money Laundering focus in preparation for the FATF UK inspection. Advising clients on their anti money laundering responsibilities, including reporting obligations and risks associated with tipping off.

## Experience

Heavily involved in the supervisory regulation of Cobbetts, Challinors, Manches, Linder Myers, & Davenport Lyons, as well as a significant number of law firms who are not in the public arena because their financial position recovered with our support and guidance.

Recently taking formal Solicitor Manager appointments for First Stop Legal Services t/a GT Law (in Administration), Jeffrey Green Russell (in Administration) and Challinors (in Liquidation).

Advising clients on their regulatory responsibilities, including interventions and the impact of the statutory charge.

# What we are going to cover

- What is money laundering?
- Why it's important
- Accountants vs Legal sector
- Legislation – A brief recap
- 4<sup>th</sup> Money Laundering Directive
- Client Due Diligence
- Case studies
- What can you do?
- Key things to remember
- What's coming up
- Want to know more?
- Questions

# What is money laundering?

- The process by which the proceeds of crime, and the true ownership of those proceeds, are changed so that the proceeds appear to come from a legitimate source.
- Also remember ‘Soft Money Laundering’, e.g.
  - Client has undervalued their earnings to HMRC
  - A seller client has not obtained the required authorisation for building work
  - A client has breached an environmental permit

All could be proceeds of crime!

# Why it's important

- Criminal sanctions for you personally
    - Up to 14 years imprisonment
  - Large penalties for firms
    - 5 million Euros
- Or
- 10% of the businesses annual turnover
- 
- Reputational damage if you get it wrong
  - FATF undertaking no notice inspections – it could be you/ your firm

# Accountants vs Legal sector

Generally both have very similar requirements when it comes to AML

Accountants	Solicitors
CDD must be carried out on clients	CDD must be carried out on clients
Source of funds check	Source of funds check
Reports to UKFIU if suspicion	Reports to UKFIU if suspicion
Must not tip off	Must not tip off
Legal professional privilege does not apply to accountants	Legal professional privilege
Records must be kept	Records must be kept
Risk assessment	Risk assessment
Enhanced due diligence for PEP's,	Enhanced due diligence for PEP's
Systems in place to ID, assess and mitigate AML concerns	Systems in place to ID, assess and mitigate AML concerns
Reliance	Reliance
Monitoring and refreshing CDD	Monitoring and refreshing CDD
Penalties	Penalties
Potentially classed as a professional enabler	Potentially classed as a professional enabler
Must appoint an MLRO	Must appoint an MLRO

# Legislation

- Various EU directives
- Money Laundering Regulations – 2007
  - Knows – actual knowledge
  - Suspects – a possibility which is more than fanciful – that the relevant fact exists
  - Reasonable grounds to suspect – an objective test
- Proceeds of Crime Act 2002 (ML reporting and offences)
  - Concealing/ arrangements/ acquisitions
  - Failure to disclose – S330 - to know or suspect that another person is engaged in money laundering
- Terrorism Act 2000 offences – money or property used for purpose of terrorism

# Tipping off

- **Strict Liability offence**
  - Offence to tell a person a report has been made to UK FIU
  - If sharing that information is likely to prejudice an investigation into that report
  - Telling a person that a money laundering investigation is being considered or conducted
- **Defences to tipping off**
  - Telling another solicitor where it relates to clients of both parties or a transaction they are involved in for the purpose of prevention
  - Telling the client and for the purpose of prevention
- **Prejudicing an investigation**
  - Offence to prejudice an investigation under POCA
  - Includes telling other people or tampering with evidence



# Some practical advice on how to avoid tipping off

- Divert clients number to voicemail
- Make secretaries aware that you are not taking calls from this client (but don't say why)
- Do not pass any calls from the client to the fee earner
- If you need to speak to the client - Give a generic answer
- Don't place the report/ conversation with the MLRO on the client file

# Defences & Consent

- Defence
  - Make an authorised disclosure to UK FIU prior to doing the prohibited act and obtaining consent
  - Reasonable excuse
  - You did not receive appropriate training
- What about privilege? LPP and privilege under POCA
- Consent
  - Disclosure to UK FIU and ask for consent to proceed even though you suspect it might be money laundering
  - UK FIU have 7 days (working) to grant consent
  - You must not do anything that would amount to ML in that time
  - If UK FIU refuse they have a further 31 days to take action

# 4<sup>th</sup> Money Laundering Directive

- New ML regulations for UK
- Came into force 26 June 2015
- 2 Years to implement the rules into national laws
- New customer due diligence checking requirements
- New obligations to report suspicious transactions and maintain records of payments
- Internal controls to mitigate money laundering and terrorist financing
- EU countries need to keep a register to record the ultimate 'beneficial' owners of businesses - need to strike a balance between AML and DPA here
- Focus on risk assessments and domestic PEP's
- Focus from Government on professional enablers in particular ML
- Supervisors expected to do more

# New Legislation

## Serious Crime Act 2015

- Came into force on 01 June 2015
- New custodial offence – Professional Enablers
- Enshrines in statute the principle established in case law that a person reporting suspicions of ML and declining or delaying compliance with customer instructions shall be protected from civil liability towards that customer
- Section 37 *“(4A) Where an authorised disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by or on whose behalf it is made.”*
- ‘Made in good faith’
- E.g case study ‘Cyprus’

# Client Due Diligence – Regulation 7

- Not KYC
- Identify and verify client by individual means
- Identify and verify beneficial owners – **Case study Cyprus**
- Obtain information on the purpose and intended nature of business relationship
- Simplified
- Enhanced, required if;
  - Client not dealt with face to face
  - Client who is a politically exposed person (PEP)
  - **Any other situation which may present a higher risk of money laundering**
- Source of funds
- Client ID at a glance
- Risk based approach Reg 7(3)
- Remember also regulation 9 regarding when CDD must be undertaken - **before** a business relationship has been established.

# Sanctions

- Make economic resources available to or deal with property belonging to anyone on sanctions list
- Defence – believed not on list, obtained license
- The Treasury's Asset Freezing Unit maintains a consolidated list of financial restrictions in force in the UK <http://www.hm-treasury.gov.uk/financialsanctions>
- The Sanctions policy is contained within the office manual which includes a link to the sanctions list
- FATF also have a non co-operative countries and territories list – no countries on there at present.

# Politically Exposed Persons (PEP's)

- Entrusted in last year with one of the following functions by a community institution, international body or state other than the UK
- Head of state, government, minister, deputy or assistant
- Member of Parliament
- Member of supreme court, high level judicial body
- Ambassador, charge d'affairs and high ranking officer of armed forces
- Member of administrative, management or supervisory bodies and state owned enterprises
- Plus family members and known close associates
- Extended to domestic PEP with 4<sup>th</sup> Money Laundering Directive

# Monitoring and refreshing

- Triggers;
  - High risk area
  - Document out of date
  - Change in circumstances or personal details
  - Suspicions of ML or TF, e.g. unusual transactions/ does not fit with previous behaviours



# Reliance

- Can I use someone else to do CDD?
- Using an verifier or another person as a source is not reliance
- Specific requirements as to who you can use
- Must be willing to provide evidence of identity which they have used
- You remain liable
- Electronic searches

# Record Keeping

- Demonstrate to regulatory bodies and law enforcement agencies complied with regulations – i.e. Document
- Keep records for 5 years after relationship ended of;
  - Verification
  - Retainer evidence
  - Business relationship
- Keep reporting records separately from client file – risk of tipping off

# Case study examples

- Exeter
- Cyprus

# What can you do?

- Attend training & provide AML training to your staff
- Ask advice
- Risk based approach
- Be alert to;
  - New clients
  - Non face to face
  - PEPs
  - Clients from jurisdictions with concerns about organised crime and corruption
  - Cash businesses
  - Known convictions/associations
  - Complicated business structures
- Red flags/ warning signs
  - Unusual transactions
  - Transactions out of keeping with the clients' previous behaviour

# Things to remember

- Provide AML training to ALL staff
- Complete regular refresher training
- Consider using a test to ensure staff have took on board the training
- Have a good AML policy – review it regularly
- Make sure staff know where to find it – and have read it!
- The MLRO has the last say – so its important they have sufficient seniority within the firm
- Consider having deputy MLRO's
- Record all reports to the MLRO
- Make detailed records of reports sent to the UKFIU
- Even if you get consent from the UKFIU consider whether you are happy to proceed – if not STOP ACTING

# What's coming up?

- FATF anticipated inspection spring 2017
  - No notice for firm interviews
  - Brand UK PLC
- Legal Profession
  - Client banking
  - Conveyancing
- SRA AML Report due early 2016.

# Want to know more?

- Would you like your firm to be more prepared for the FATF review and ensure you are compliant?
- Would you have liked to have received the SRA AML review, but didn't?
- Lockton's online resources
  - AML/file-opening form
  - Identifying fraudulent documents
  - Share this webinar with colleagues
  - Slides to create your own AML seminar in house
- Ashford's resources
  - Bespoke face to face AML training seminar
  - A half/ full day review of your firms policies and procedures, finishing with a feedback session

QUESTIONS





# Contact us

For further assistance, guidance or support contact us –

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