

## Frequently Asked Questions – Criminality Check Requirements under MLR 2017

See the flowchart at the end of this document for a simple overview of the 2018/19 and new application process in relation to criminality checks

### Q1. Why are criminality checks required?

This change was introduced by the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017). Under [Regulation 26](#) no beneficial owners, officers and managers (BOOMs) of supervised firms can have any criminal convictions for offences listed in [Schedule 3](#).

In determining and carrying out its obligations under Money Laundering Regulations, and in particular in determining whether to accept applications for registration, the CIOT and ATT, as AML Supervisory Authorities, are required to understand whether proprietors and certain other individuals associated with an applicant firm have been convicted of a criminal offence.

We do not believe that this obligation can be discharged by total reliance on self-certification by the individuals concerned, however much they may be in good standing with us more generally as members. Member firms seeking supervision by the CIOT and ATT are required by us to carry out a criminality check on their business owners, officers or managers (BOOMs). Please note that we cannot comment on the approach of other supervisors to their supervised populations. This is a one-off check at this stage. We have received no guidance from HM Treasury regarding any future requirements for updated checks.

### Q2. What is the definition of BOOMs?

All firms applying for AML supervision and renewing their registration for 2018/19 need to identify the BOOMS relevant to their organisation. The definition agreed with HM Treasury in relation to BOOMS is as follows:

#### Officer

This should include:

- a sole practitioner;
- a partner in a partnership (including a Scottish Limited Partnership (SLP));
- a member in a limited liability partnership (LLP);
- a director or company secretary in a limited company; and \*\*
- a member of the firm's management board or equivalent.

#### Beneficial owner

This should include:

- a sole practitioner;
- a partner, or LLP member, in a firm who:
  - o holds (directly or indirectly) more than 25% of the capital, or profits or voting rights; or
  - o exercises ultimate control; and
- a shareholder in a limited company who:
  - o holds (directly or indirectly) more than 25% of the shares or voting rights; or

- ultimately owns, or exercises ultimate control.

### **Manager**

This should include:

- the nominated officer (the MLRO);
- the member of the board of directors (or if there is no board, of its equivalent management body) or of its senior management as the officer responsible for the relevant person's compliance with MLR17); and
- any other principal, senior manager, or member of a management committee who is responsible for setting, approving or ensuring the firm's compliance with the firm's Anti-Money Laundering policies and procedures, in relation to the following areas:
  - client acceptance procedures;
  - the firm's risk management practices;
  - internal controls, including employee screening and training for AML purposes;
  - internal audit or the annual AML compliance review process;
  - customer due diligence, including policies for reliance; and
  - AML record keeping.

**\*\* Members are reminded that where a spouse or civil partner is a director or shareholder those individuals **must** be included in the relevant section of the registration form and criminality checks **must** be undertaken.**

### **Q3. How are criminality checks obtained?**

The CIOT and ATT are not able to obtain Criminality checks directly.

Criminality checks must be carried out through [Disclosure and Barring Service \(DBS\)](#) for members working in England and Wales or through [Disclosure Scotland](#) or [AccessNI](#) for members working in Scotland or Northern Ireland. Further information on how to carry out criminality checks can be found [here](#). Checks cost £25 and are usually processed within 14 days. Members will need to apply for the checks themselves as CIOT/ATT are not registered to carry out checks on behalf of members. They will also need to ask any other BOOMS within their organisation to carry out a check and pass the information to the nominated principal. This can be done either by giving a copy of the criminality check results to the nominated principal or by giving them access to the online check results. This is necessary so the nominated principal can complete the declaration on the registration form. If the MLRO is not the same person as the nominated principal they may also wish to have a copy.

Criminality checks for those who are based outside the UK or have lived outside the UK prior to the date of registration will also need to be obtained. Where they have been in the UK for some time a UK check will be needed as based on the paragraph above. You will also need to undertake checks for the overseas territories where they've lived in the previous five years. Guidance for employers on obtaining checks for overseas individuals may be of assistance in these circumstances and can be accessed [here](#).

#### **Q4. How recent do the checks need to have been?**

HM Treasury have indicated that criminality check results should be no more than 3 months old.

CIOT and ATT require the following:

- 2018/19 renewals – the criminality check certificate should be dated no more than 3 months before the date of submission of your renewal form.
- New applications – the criminality check certificate should be dated no more than 3 months before the date you first apply for AML supervision.
- In cases where applications have been rolled over from 2017/18 – the criminality check certificate should be dated no earlier than 26<sup>th</sup> March 2018.

#### **Q5.If I have already had a criminality check in relation to work I undertake for a charity can I base my declaration on the results of that check?**

Where members or other BOOMS have the results of a criminality check obtained for another purpose issued within the appropriate time frame that may be sufficient. If a member provides the results of an enhanced check to CIOT and ATT they should be aware that they may be disclosing more information than is required under the regulations.

#### **Q6.Will CIOT and ATT require sight of all of the results of the criminal checks?**

**All sole principals (i.e. all sole practitioners and sole director/shareholders)** are required to provide their checks to us. For all other firms renewing for 2018/19 we will be undertaking spot checks of the criminality checks carried out on BOOMS.

Sole principals should email a scanned copy of the results of their criminality check to [aml@tax.org.uk](mailto:aml@tax.org.uk). Please note the subject of the email as “**sole principal criminality check**” followed by the name of your firm.

In relation to 2018/19 renewals firms which are not sole principals should not email the results of the criminality checks to CIOT and ATT at this stage. The results should be retained and provided to CIOT and ATT in relation to any supervision visits or when requested as part of a spot check.

In relation to **new registrations** from 1st January 2018 onwards the criminality check certificates must be submitted as soon as possible after the date of registration and within 30 days of that date unless requested earlier. The CIOT and ATT will not be able to acknowledge new registrations without sight of these.

#### **Q7.Do I have to wait for the results of all criminality checks before I submit the 2018/19 renewal or new application form?**

The AML registration form requires the nominated principal to confirm that criminality checks on all Beneficial Owners, Officers and Managers have been undertaken and to go on to confirm that none of them have committed a relevant offence under Schedule 3 of the MLR.

On this basis it is necessary to have had sight of the relevant criminality check certificates before members submit their renewal or application form.

Sole principals must ensure they email a copy of the results to [aml@tax.org.uk](mailto:aml@tax.org.uk) within the following time frame:

- 2018/19 renewals – all check results must be emailed by 26<sup>th</sup> June 2018
- New applications – all check results must be emailed within 30 days of the date of submission of the application.

Please note that for sole principals we won't be able to acknowledge your registration until we have received your criminality check in order to comply with HM Treasury requirements.

Firms other than sole principal firms should note the requirements set out in answer to Q6.

### **Q8. What will happen if the criminality check certificate indicates a criminal conviction?**

If a BOOM's certificate shows a criminal conviction in relation to an offence listed in [Schedule 3](#) MLR 2017, CIOT and ATT will not be in a position to approve those individuals and will not therefore be able to supervise the firm.

The firm will need to take immediate action to remove the individual from their position as a BOOM otherwise AML supervision will cease. All supervisory bodies are required to take the same approach and therefore the firm will be unable to register with any supervisory body if the BOOM remains in position. Supervision is a legal requirement and therefore the firm will be operating illegally without AML supervision being in place.

If a criminal conviction is shown which is not listed in [Schedule 3](#) MLR 2017 no action will be required and CIOT or ATT will still be able to be AML supervisor. However, members will need to notify CIOT and ATT of their criminal conviction in accordance with paragraph 2.10 of Professional Rules and Practice Guidelines ([CIOT](#) and [ATT](#)).

### **Q9. What happens if a firm appoints a new BOOM?**

#### **a. Notification Requirements**

Where a new Money Laundering Reporting Officer or Board Member or Senior Manager is appointed (Regulation 21) details relating to the individual must be notified to the CIOT and ATT within 14 days of appointment.

Details of other new BOOMS should be notified within 30 days of appointment. It is sufficient for the firm to notify us by email to [aml@tax.org.uk](mailto:aml@tax.org.uk). The email should include:

- The name of the firm and AML supervision reference
- The name and address of the new BOOM and date of appointment
- Confirmation of the following by the nominated principal on receipt by them of a clean criminality check certificate:

'We confirm that we have carried out criminality checks on [named individual]

We confirm that [named individual] has not committed a relevant offence under Schedule 3 of the MLR'

**b. Criminality Checks on new BOOMs**

Copies of the Criminality check certificates should also be emailed to the CIOT within 30 days of the appointment of a new MLRO, Senior manager or other BOOM. These should be emailed to [aml@tax.org.uk](mailto:aml@tax.org.uk).

**Q10. What happens if a BOOM is convicted of an offence set out in Schedule 3 MLR 2017 AFTER the current criminal check has taken place?**

If the BOOM is convicted of a criminal offence within the list in Schedule 3 MLR 2017 after the current checks have taken place either they or their firm must inform CIOT or ATT **within 30 days** of the date on which the individual was convicted.

As indicated above the firm cannot be supervised if the BOOM remains in position.

**Q11. What happens if members submit their application form indicating that the criminality checks have been completed and that none of the BOOMS have committed an offence and cannot produce copies of the checks?**

Where CIOT and ATT find checks have not been undertaken on some or all of the relevant BOOMs they will require the firm to arrange for the checks with immediate effect and provide a copy of the results within an agreed time frame. The nominated principal may be referred to the Taxation Disciplinary Board for disciplinary action for making a false declaration on the AML application/renewal form.

## Q12. Flowchart summary of the steps required

The following sets out in simple terms the steps which members need to take in order to meet the registration or 2018/19 registration renewal requirements in relation to the scheme and criminality checks.

