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Anti Money Laundering Webinar  
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## Chair

Alistair Cliff, Chair of the Joint Professional Standards Committee

## Speakers

Heather Brehcist, Head of Professional Standards CIOT

Charlotte Ali, Head of Professional Standards ATT

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# New Money Laundering Regulations

- The 4<sup>th</sup> Money Laundering Directive came into force on 26 June 2015 and had to be transposed into UK laws by 26 June 2017.
- Draft regulations were issued in March 2017 but finalisation was delayed by the election.
- The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017) came into force on the 26<sup>th</sup> June.

# What we will cover

- Background to the new regulations
- Risk Assessment
- Policies, procedures and controls
- Customer Due Diligence
- Training
- Record Keeping
- Supervisor Obligations
- Office for Professional Body AML Supervision (OPBAS)
- Checklist



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# Risk Assessment

# Risk Assessment - National Risk Assessment (NRA)

Risk Assessment is required at different levels. On a national level, the government published the UK's second NRA of money laundering and terrorist financing on 26 October. The key findings of the 2017 NRA are:

- The criminal exploitation of banks, professional financial services and cash remain the greatest areas of money laundering risk to the UK.
- The distinctions between money laundering typologies are becoming increasingly blurred. Criminal funds are progressing from lower level laundering and are being accumulated into larger sums to be sent overseas using more sophisticated methods.
- Professional services are a crucial gateway for criminals looking to disguise the origin of their funds.
- Cash, alongside cash intensive sectors, remains the favoured method for terrorists to move funds through and out of the UK.

# Risk Assessment - The Business

A written AML risk assessment is now mandatory (Regulation 18).

Remember the AML regulations require a risk based approach so thinking through the risks for the business informs policies and procedures.

Risk factors to be taken into consideration include:

- Types of customers (clients)
- Services provided
- Countries in which the business operates



If requested supervised members must provide to their supervisor:

- The risk assessment
- The information on which the risk assessment was based
- The steps taken to produce the risk assessment

# Risk Assessment - Clients

Risk assessment at individual client level continues to be important in order to:

- identify which clients have attributes known to be frequently used by money launderers or terrorist financiers
- inform the level of Client due diligence (CDD) required
- inform the level of ongoing monitoring required

Practices should risk assess clients at the start of the business relationship and on a periodic basis.

# Policies, Procedures & Controls

# AML Policies, Procedures & Controls

- Have always been required but must now be in writing (Regulation 19). This includes sole practitioners.
- The business risk assessment will inform what policies and procedures are required.
- Regulation 19 also includes the obligation to:
  - Regularly review and update the policies
  - Maintain a written record of changes
  - Maintain a written record of steps taken within the organisation to communicate the changes.

# AML Policies, Procedures & Controls (Cont..)

Policies, controls and procedures must be proportionate to the size and nature of the business and approved by senior management (where relevant).

They must include:

- risk management practices
- Internal controls
- Customer due diligence
- Reliance and record keeping
- The monitoring and management of compliance with, and internal communication of, such policies, controls and procedures.

# AML Policies, Procedures & Controls (Cont..)

Firms with more than one Principal will need to consider the requirements of Regulation 21.

Additional controls which may be required are:

- The appointment of a director or senior manager responsible for AML compliance (in addition to MLRO).
- Screening of employees before appointment and during employment.
- Establishment of an internal AML audit function



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# Customer Due Diligence (CDD)

# Customer due diligence (CDD)

## Enhanced due diligence (EDD) (Regulation 33)

The regulations set out circumstances when this **must** be applied including:

- where there is a high risk of money laundering or terrorist financing;
- where a transaction or business relationship involves a person established in a 'high risk third country'.
- if the client is a Politically Exposed Person (PEP), or a family member or known close associate of a PEP
- in any case where the customer has provided false or stolen identification documentation or information on establishing a relationship;
- in any case where you identify that the customer has entered into transactions that are complex and unusually large, or there is an unusual pattern of transactions, and the transaction or transactions have no apparent economic or legal purpose



# Customer due diligence (CDD)(Cont..)

## Enhanced due diligence (EDD) (Regulation 33)

The regulations also set out what risk factors to consider to determine whether there is a high risk of money laundering or terrorist financing:

- a) Customer risk factors
- b) Product, service, transaction or delivery channel risk factors
- c) Geographical risk factors

# Customer due diligence (CDD) (Cont..)

## Standard due diligence

Standard due diligence continues to be required as before. It is the required level of due diligence unless you are aware that the EDD requirements apply or where simplified due diligence cannot be justified (see below).

The nature of CDD required must be considered on an individual basis for each client.

# Customer due diligence (CDD)(Cont..)

## Simplified due diligence (SDD) Regulation 37

- No longer the default option for certain entities such as listed companies.
- Can be applied where considered appropriate.
- If challenged members will need to justify why SDD was appropriate and will need to maintain suitable records.
- Risk factors are set out in the regulations.

# Customer due diligence (CDD)(Cont..)

## Simplified due diligence (SDD) Regulation 37 (Cont..)

Factors to consider when assessing risk and considering SDD are:

Customer risk factors e.g. is the customer a publicly owned enterprise?

Product, service, transaction or delivery channel risk factors (those set out in the regulations relate mostly to financial products)

Geographical risk factors e.g. client is based in an EEA state

# Customer due diligence (CDD)(Cont..)

## Company formation work (Regulation 4)

- CDD must be undertaken even where this is the only transaction required for a customer.
- Where you use a company formation agent they may now be requiring CDD from the tax adviser's client or asking for certified copies of CDD.

# Customer due diligence (CDD)(Cont..)

## Unlisted Companies & LLPs (Regulation 28)

Whilst it may have been common practice previously to obtain the following the requirement on the information which must be obtained and verified is now set out in the regulations:

- Company name and number
- Address of Registered office and, if different, place of business
- Articles of association or other governing documents and the law it's subject to
- Names of board members and senior persons responsible for operations.

MLR 2017 makes it clear you cannot just rely on Companies House information.

# Customer due diligence (CDD)(Cont..)

## Persons acting on behalf of your client (Regulation 28 (10))

Where A acts on behalf of a customer MLR 2017 requires firms to:

- verify that A is authorised to act on the customer's behalf;
- Identify A and verify A's identity on the basis of documents or information in either case obtained from a reliable source which is independent of both A and the customer.

# Customer due diligence (CDD)(Cont..)

## Trust changes

There are tougher rules on checking the beneficial owners of trusts. The definition of the beneficial owner has been expanded and includes:

- the settlor
- trustees
- beneficiaries
- anyone with control of the trust

Where the individuals (or some beneficiaries) have not been determined the beneficial owner includes the class of persons in whose main interest the trust is set up or operates. It may not be possible to id check this class of people but firms need to be satisfied with the explanations provided here.



# Customer due diligence (CDD)(Cont..)

## Trust changes (Cont..)

Firms must take reasonable measures to verify beneficial ownership.

Trustees will have to keep a record of the beneficial owners and they must provide details if requested where a business relationship has been entered into. Where during the course of the business relationship these details change then trustees must notify the relevant person within 14 days.

A register of trusts will be maintained by HMRC.

# Customer due diligence (CDD)(Cont..)

## Politically exposed persons (PEPs)

- The definition has been extended to include UK PEPs.
- When taking on new clients check whether there are any connections with UK PEPs.
- Senior Management must approve continuing business relationships with PEPs.
- The FCA have written helpful guidance on the treatment of PEPs.

# Customer due diligence (CDD)(Cont..)

## Reliance on third parties (Regulation 39)

- Reliance has always been available where firm A wants to agree to rely on the CDD undertaken by another firm (firm B).
- The agreement must now be in writing and the requirements are set out in the regulations.
- Note though that the firm providing services to the customer continues to be liable for any failure in relation to CDD.

# Training

Regulation 24 covers training and firms must

- take appropriate measures to ensure that its relevant employees are trained in relation to the relevant laws and data protection issues and on how to recognise and deal with transactions relating to money laundering or terrorist financing.
- Whilst it has always been good practice to maintain a record in writing of the training given this is now a requirement of the regulations.

# Record Keeping

# Record Keeping

Data protection changes are reflected in the new regulations.

As before CDD must be retained for at least five years after the end of the business relationship. Transaction details must now be retained for the lesser of ten years following the transaction or five years after the end of the business relationship.

Personal information must be destroyed after the five years has expired unless:

- The business is required to retain it under statutory obligation, or
- The business is required to retain it for legal proceedings, or
- The data subject has consented to the retention for example by agreeing to this in the terms of their engagement letter with the tax adviser.

# Supervisor Obligations

## Supervised members requirements - Regulation 26

- No person can be the beneficial owner, officer or manager of a supervised firm, or a sole practitioner unless that person has been approved by the supervisory body.
- If an approved person is convicted of a relevant offence they must tell their supervisory body of the conviction within 30 days.
- Criminal checks will be required as a condition of being supervised in future.



# Office for Professional Body AML Supervision (OPBAS)



The government have proposed the introduction of this body to complement MLR 2017. It is a new oversight body to supervise the professional body AML supervisors. The aim is to ensure consistency of operation between professional body supervisors and maintain high standards. It is due to be in place during 2018.

Current plans indicate that OPBAS will be funded by the professional bodies (which would be reflected in supervision fees) but full details have not yet been provided.

The professional bodies are consulting with government.

# Checklist of actions

What will supervisors be looking for at AML visits:

- A written risk assessment for the firm
- Written policies and procedures incorporating MLR 2017 requirements
- CDD meets MLR 2017 requirements
- Clients are risk assessed
- CDD and risk assessments are considered on an ongoing basis
- Training is up to date and recorded
- Record keeping is appropriate and where relevant engagement letters set out an extended period for retention of records.

## Questions and Answers

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# Additional Information

MLR 2017 - [http://www.legislation.gov.uk/uksi/2017/692/pdfs/uksi\\_20170692\\_en.pdf](http://www.legislation.gov.uk/uksi/2017/692/pdfs/uksi_20170692_en.pdf)

CCAB Guidance -

<http://www.ccab.org.uk/documents/TTCCABGuidance2017regsAugdraftforpublication.pdf>

FCA guide on the treatment of PEPs -

<https://www.fca.org.uk/publication/finalised-guidance/fg17-06.pdf>

National Risk Assessment:

<https://www.gov.uk/government/publications/national-risk-assessment-of-money-laundering-and-terrorist-financing-2017>