



The Law Society

## **Money Laundering Legislation: Guidance for Solicitors**

**14 August 2002**

The Law Society is conscious of its duty to protect and assist solicitors in the fight against money laundering which is a global problem. This revised guidance has been prepared by the Law Society for the benefit of the profession in connection with the money laundering legislation – the substantive law and the Money Laundering Regulations 1993. The blue Money Laundering Information Pack 2 has been available upon request but this revised guidance is being sent to all firms in 2000 to further raise awareness of the growing problem. Where italics appear, this denotes reference to the substantive law and the Regulations.

This revised guidance takes into account the Joint Money Laundering Steering Group's notes which were last revised in April 1999. It is intended to assist solicitors faced with unusual circumstances which can range from cause for concern through to knowledge of money laundering activities and to help solicitors comply with the Money Laundering Regulations 1993. New aspects include, the legislation set out at Annex B, guidance for Money Laundering Reporting Officers (MLRO) contained at Annex G and examples at Annex H.

Further copies of this guidance are available from the Law Society website at <http://www.lawsociety.org.uk> Professional Ethics ( 0870 606 2577) or Practice Advice Service ( 0870 606 2522). **However, it must be emphasised that this guidance is not a substitute for expert legal advice which should be sought on specific legal problems.**

This guidance is correct at August 2002 and refers to the eighth edition of the Guide to the Professional Conduct of Solicitors (1999).

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## **Introduction**

The “anti-money laundering regime” introduced in 1994 is now part and parcel of everyday good practice for the solicitors’ profession. Experience of working with the legislation has led to this Second Edition of the Money Laundering Guidance Notes. These notes are not designed to cover every possible eventuality which solicitors may come across in practice but to assist by way of guidance. It is recommended that solicitors and their staff operate “the golden rules” set out below, and seek the guidance of the Law Society or seek legal advice when in any doubt as to how to proceed.

## **The Golden Rules**

- Know the legislation
- Know the professional guidelines
- Know your client
- Know your business
- Train your staff
- Monitor compliance by your staff

Our thanks and acknowledgement go to the National Criminal Intelligence Service who have reviewed a draft of this guidance and to the Joint Money Laundering Steering Group for their permission to make reference to and reproduce extracts from their guidance notes.

## 1. Scope of guidance

- 1.1 The provisions of the Criminal Justice Act 1993, which implement the First European Money Laundering Directive, now cover the proceeds of all crime and not just drug and terrorist related activities. The Money Laundering Regulations 1993 apply to solicitors who conduct investment business and may apply to solicitors who undertake any of the activities set out in the schedule to the Regulations. Failure to comply with the regulations, for example, by not having in place procedures to combat money laundering is a criminal offence.
- 1.2 These guidance notes have been drawn up by the Law Society of England and Wales for the use of solicitors and their employees. The guidance notes are intended to be advisory only and they are intended to give guidance on good practice. Failure to comply with these notes does not automatically mean that a firm has breached the Money Laundering Regulations 1993.
- 1.3 The guidance covers the work of solicitors in England and Wales. Where a firm has an overseas branch, it is advised to follow this guidance to the extent that it is consistent with local laws. Particular attention is given to solicitors who engage in investment business under the Financial Services Act 1986, as they need to comply with the provisions of the Money Laundering Regulations 1993 as well as the substantive law. A copy of the Regulations can be found at Annex A and the legislation is at Annex B.

## 2. What is money laundering?

- 2.1 The phrase “money laundering” means the process by which the identity of “dirty money”, that is the proceeds of criminal conduct/crime, and the true ownership of those proceeds, is changed so that the proceeds appear to originate from a legitimate source. It is important that solicitors and their employees take steps to ensure that they are not used by those seeking to legitimise the proceeds of crime. Solicitors must be aware that they may be involved in the money laundering process. Where appropriate solicitors must comply with the Money Laundering Regulations, and keep records so that those investigating money laundering do not lose “the audit trail”.
- 2.2 The term “criminal conduct” includes any conduct, wherever it takes place, if it would constitute an indictable offence if it took place in England and Wales, i.e. an offence serious enough to be tried in the Crown Court. This includes drug trafficking offences, terrorist activity, theft and fraud, robbery, forgery and a variety of tax related offences.
- 2.3 A firm risks, at the very least, a loss of professional reputation if it becomes involved in money laundering and at worst, prosecution. Many firms have voluntarily adopted the procedures contained in the Regulations when undertaking other legal services such as conveyancing and commercial transactions. **A failure to comply with the Regulations constitutes an offence punishable by imprisonment, or fine or both whether or not money laundering has taken place.**
- 2.4 The substantive law applies to everyone, including employees.

## **A. The Substantive Law**

### **3. The statutory offences**

3.1 The law, in relation to money laundering, is contained in a number of different Acts:

- The Drug Trafficking Act 1994 (sections 49 -53)
- The Criminal Justice Act 1988 (sections 93A – 93H)
- The Prevention of Terrorism (Temporary Provisions) Act 1989 (sections 11 – 18A)
- The Criminal Justice (International Co-operation) Act 1990
- The Northern Ireland (Emergency Provisions) Act 1991
- The Criminal Justice Act 1993 (as it amends the legislation)
- Proceeds of Crime Act 1995 (as it amends the CJA 88)

A table of offences together with the main offences under the UK legislation can be found at Annex B.

3.2 It is important for solicitors to recognise that the substantive law applies to all solicitors in their business capacity and not simply to those who are conducting investment business under the Financial Services Act 1986.

3.3 The offences of which solicitors should be most particularly aware fall into three groups.

#### **Assistance**

*The combined effect of these statutes is to make it an offence for any person to provide assistance to a money launderer to retain the benefit of funds if that person knows or suspects, or in the case of terrorist activities should have known or suspected, that those funds are the proceeds of drug trafficking, terrorism or serious criminal conduct. Such assistance is punishable on conviction by a maximum of 14 years' imprisonment or fine or both.*

*It is a defence if the person concerned reported his knowledge or suspicions to his employer or the law enforcement agencies at the first available opportunity.*

#### **Tipping off**

*It is also an offence, subject to certain exceptions, for anyone to prejudice an investigation by informing the person who is the subject of a suspicion, or any third party, that a disclosure has been made either internally, or externally to the relevant authorities, or that the authorities are acting or are proposing to act in connection with an investigation into money laundering. The punishment on conviction for this "tipping off" offence is a maximum of 5 years' imprisonment or fine or both.*

Preliminary enquiries of a client either to obtain more information, or to confirm identity, or to clarify e.g. the source of funds, or questions of a client during a transaction to clarify such issues, will not give rise to a tipping off offence unless that solicitor knows that a suspicious transaction report to the authorities has already been made or the solicitor knows, or suspects, the existence of a current or impending investigation.

## Failure to report

*In the case of drug trafficking and terrorist activity, it is also an offence for any person who acquires knowledge or a suspicion of money laundering in the course of his trade, profession, business or employment not to report the knowledge or suspicion of money laundering as soon as it is reasonably practical after the information came to his attention. Failure to report knowledge or suspicion in these circumstances is punishable by a maximum of 5 years' imprisonment or a fine or both. Solicitors who have particular obligations of confidentiality will wish to know that disclosures are protected in the legislation from claims in respect of any alleged breach of client confidentiality when reporting suspicions of money laundering in these circumstances. (See also para.5 regarding legal professional privilege).*

Partners and employees of solicitors who are engaged in investment business and who follow the internal reporting procedures laid down by the firm will be taken to have reported knowledge or suspicion by following the internal reporting procedures.

## 4. Constructive trusts

- 4.1 Any person who becomes involved in laundering the proceeds of a theft or fraud in particular could be held liable to the true owner as a constructive trustee of the proceeds. The law in this area is not clear but reference can be made to the following cases; *Baden Delvaux and Lecuit v. Societe Generale* (1983) BCLC 325, *Re Montagu's Settlement Trusts* (1987) Ch264, *Agip (Africa) Ltd v Jackson* (1992) 4 All ER 385, *Finers v Miro* (1991) 1 All ER 182 .
- 4.2 Whilst it is unlikely that a constructive trust would be deemed to arise in the absence of dishonesty or want of probity on the part of a solicitor who has complied with the law and professional guidance, if there is any doubt about the ownership of funds, an application can be made to the court under Schedule 1 RSC Order 85 of the Civil Procedure Rules. In *Finers v. Miro* (1991) 1 All ER 182, the court indicated that it has jurisdiction to give a solicitor directions as to how he or she should deal with funds held or controlled on behalf of a client, against whom there was prima facie evidence that the client had obtained such funds or assets fraudulently.

## 5. Legal professional privilege

- 5.1 The concept of legal professional privilege which arises within a solicitor/client relationship is protected by the money laundering legislation. Where a solicitor receives information giving rise to a suspicion of drug or terrorist money laundering, or discloses information to a person other than a constable which is likely to prejudice an investigation into drug or terrorist money laundering, and that information is received or given in privileged circumstances, solicitors will have a defence to an allegation of failure to report or "tipping off". *The Act specifically says that it will not be an offence for a Professional Legal Adviser who receives information from, or makes disclosure of information to, a client, or a representative of his client, in connection with the giving by the legal adviser of legal advice to the client; or to any person in contemplation of or in connection with legal proceedings, and for the purpose of those proceedings.* This definition follows very closely the accepted common law definition of the situation which gives rise to legal professional privilege. **However, it is important to remember that where a client or a third party through a client is using the solicitor or the services provided by the solicitor with a view to furthering any criminal purpose, legal professional privilege will not arise.**

## **B. The Money Laundering Regulations 1993**

### **6. The Money Laundering Regulations 1993 ( see Annex A)**

- 6.1 These Regulations became effective on 1<sup>st</sup> April 1994. These place additional administrative requirements on solicitors who engage in investment business within the meaning of the Financial Services Act 1986 (FSA 86). These requirements may also apply if solicitors undertake any of the “Annex activities” i.e. those listed in the Annex to the Second Banking Co-ordination Directive which appears as a schedule to the Regulations.
- 6.2 The definition of investment business is contained in Schedule 1 of the FSA 1986 (see Chapter 27 and in particular, Annex 27A of the Guide to the Professional Conduct of Solicitors 1999). Investment business consists of two elements, an “investment” and an “activity constituting investment business”. Further guidance is contained in principles 27.02 and 27.03 in the Guide. The definition of investment business is wider than “discrete investment business” in the Solicitors’ Investment Business Rules 1995. **Wherever there is a doubt** as to whether an activity constitutes investment business within the meaning of the FSA 1986 Act, solicitors may feel that it is prudent to comply with the Regulations. The Law Society will inform the profession of the changes that occur as a result of the Financial Services and Markets Bill, which is expected to be in force in early 2001.
- 6.3 Solicitors must not start to conduct any investment business e.g. by advising on shares in a probate matter or arranging the acquisition or disposal of shares unless they have procedures in place, to comply with the Money Laundering Regulations, including client identification.

### **7. When do the Regulations apply?**

- 7.1 *The Regulations require a person or business to maintain certain procedures where, in the course of relevant financial business carried on by him in the UK, he forms a business relationship or carries out a one-off transaction with another person. Relevant financial business for solicitors means investment business within the meaning of the Financial Services Act 1986 and may also include the Annex activities.*
- 7.2 *Individuals or firms will form a business relationship with a client where there is an arrangement between them, the purpose of which is to facilitate the carrying out of transactions between them on a frequent, habitual or regular basis, and the total amount of any payment or payments to be made in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made. An example of a business relationship might be acting for a company which is acquiring a series of businesses or shares or acting for a wealthy individual who is in the habit of taking shares in a number of businesses.*
- 7.3 *A one-off transaction is any transaction other than a transaction carried out in the course of an established business relationship. The identification and record keeping requirements will not apply in respect of any one-off transaction where payment is to be made by or to the client of less than 15,000 EURO (£9,319 for the year commencing 31 December 2001), or in respect of two or more linked one-off transactions, the total amount in respect of which is less than 15,000 EURO. In the absence of specific evidence to the contrary, transactions which are separated by an interval of three months or more need not be treated as linked. The requirement to aggregate linked transactions is designed to identify those transactions which may be entered into by money launderers to avoid the identification procedures set out below. The requirement is not meant to cause inconvenience to genuine business transactions.*

- 7.4 *Where a client who is effecting a one-off transaction is introduced to the firm by a financial institution or other business from within the EU, which is itself subject to the EC Money Laundering Directive, or by a regulated institution from a country with equivalent legislation (see [Annex C](#)), the firm need not verify identity even if the transaction is for 15,000 EURO or more, provided the introducer has provided the name of the client, and given the firm a written assurance that evidence of identity has been taken and recorded. It is important to note that this concession applies only to one-off transactions and not to clients forming a business relationship with the firm, and only where no suspicion is aroused.*

## **8. Systems to prevent Money Laundering**

- 8.1 Solicitors to whom the Regulations apply must have in place internal controls, policies and procedures to deter criminals from choosing their firm for money laundering, and to ensure compliance with their obligations under the law. These include maintaining identification procedures, record keeping procedures, internal reporting procedures and training procedures. Regulation 14 (see paragraph 9.1) requires firms to have one person appointed to handle the reporting of suspicions to the authorities. Most firms find it helpful if this person also has responsibility for ensuring compliance with the regulations. A failure to comply with the regulations will constitute an offence triable on indictment with a maximum sentence of 2 years' imprisonment or a fine or both.
- 8.2 Where a firm has an overseas branch, or associates overseas over whom there is control, it is recommended that a group policy be established to the effect that all branches, whether in England and Wales or abroad, and all associate offices, should ensure that verification of identity and record keeping is undertaken at least to UK standards, or to local standards if they are higher. Solicitors should be particularly aware that the USA can choose to apply its money laundering legislation with extra territorial effect if a firm assists with the movement of US dollars, criminal funds or property and any part of the transaction takes place in the USA.

## **9. Internal reporting procedures**

- 9.1 *Attention is drawn to Regulation 14. Internal reporting procedures will comply with the Regulations if a firm nominates a person to whom a report can be made of any information or other matter which gives rise to a suspicion or knowledge of money laundering. The procedures should require that the report of money laundering be considered by the identified person who should take into account all other relevant information.* This means that the person appointed to receive such reports should be of a seniority and in a position of responsibility sufficient to enable him/her to have access to all of the firm's client files and business information. That person should also be responsible for ensuring that in relevant circumstances the information leading to a knowledge or suspicion of money laundering is properly disclosed to the relevant law enforcement authorities. Most firms would choose to appoint a partner as MLRO; this post can be combined with that of the compliance officer. (See [Annex G](#) for MLRO guidance.)

## **10. Training**

- 10.1 *Firms must ensure that employees whose duties include the handling of investment business are provided with training to make them aware of the law relating to money laundering and aware of the internal procedures which the firm maintains in relation to money laundering. Not only should there be initial training, but the firm must ensure that training is provided from time to time to ensure that relevant employees are kept up to date. Each firm*



must consider for itself which staff are “handling” investment business. Fee earners dealing with trust, probate, property and company formation matters are likely to handle investment business from time to time. It may be prudent to consider training for clerical, secretarial and administrative staff who assist those fee earners. Additionally, firms may wish to extend training to members of their accounts departments who may handle some of the documentation and financial records arising from investment business, and monitor the source of funds. Firms may decide that it is prudent to train all their staff.

- 10.2 Firms will need to consider, in the light of their own business activities, the extent of training necessary for employees. It is recommended that the MLRO, and, if different, the person within the firm identified as having overall responsibility for ensuring compliance with the Regulations, undertakes training on the implications of the Regulations. Other staff may require only short internal training to inform them of the relevant legislation, the firm’s new procedures, and the more obvious examples of money laundering transactions. Training material is available by way of literature and videos to assist in the training process (for further information, see page 14). Details of the training given to each relevant member of staff should be recorded. An example manual is given in Annex D.

## 11. Identification procedures

- 11.1 *As has been seen above, wherever relevant financial business is undertaken and the firm forms a business relationship or carries out a one-off transaction with another person, subject to the exemptions, the client must produce satisfactory evidence of his identity. Alternatively, the firm must take measures specified in their internal procedures that will produce satisfactory evidence of the client’s identity. Firms’ procedures should make it clear that where such evidence of identity is not obtained the business relationship or one-off transaction in question must not proceed any further [See Regulation 7(1)].* An individual’s identity is made up of **both name and address**. Date of birth is also a useful indicator.
- 11.2 It will rarely be possible for solicitors to rely on the “postal concession” contained in Regulation 8. The “postal concession” is intended to apply where there is no face to face meeting between the applicant for business (client) and the financial adviser (solicitor) i.e. for genuine mailshot business or off the page advertising provided that a record is maintained that –
- (a) demonstrates that the business resulted from a mailshot or advertisement, and
  - (b) gives details of the drawee branch sortcode and account number on the cheque which must be drawn on an account with an authorised EU institution in the client’s own name. (e.g. a bank or building society branch cheque) or by a banker’s draft, the payment must be certified by the issuing bank as being drawn from funds belonging to the named applicant. If this cannot be provided, the “postal concession” cannot be used and identity must be verified.
- 11.3 *Sometimes people will not be acting on their own behalf, but will be acting as agent for a third party. In these cases, the firm’s procedures must establish the identity of the underlying client.* Solicitors must be sure they are dealing with a real person or organisation (natural, corporate or legal) and verify the identity of those persons who have power to operate any bank or investment account or authority to give instructions.
- 11.4 *The Regulations contain details of a number of exemptions to the requirement for evidence of identity of clients.* For example, where there are reasonable grounds for believing that the

client is a person who is him/herself covered by the Money Laundering Regulations and/or Directive, the firm will not need to undertake enquiries into identity. Also, it is suggested that long established clients of the firm who are well known to the firm whom the firm are satisfied are who they say they are, need not be asked to produce evidence of their identity provided that there has been a continuous business relationship since before 1.4.94. However, whenever there is a suspicion of money laundering, details and evidence of the identity of the client must be obtained.

- 11.5 It is appreciated that some clients may object to a request by a solicitor for evidence of identity. It is recommended that clients be told in the initial interview or client care letter of the reason for the request for such information. More and more people are now used to being asked for evidence of identity by their bank or building society, so it will be increasingly rare to find a client who objects to such a request from a solicitor.
- 11.6 Firms will need to consider what type of evidence will satisfy them as to the true identity of the client. It is recommended that each firm produce standard forms for use by their staff on which can be recorded the client's name or names used, current permanent address, and wherever possible date and place of birth (for example manual, see Annex D). Evidence such as a current full valid passport, or national identity card containing a photograph of the client should be requested. Entries in the Electoral Roll, or a recent utility bill, council tax bill or bank statement may also provide sufficient evidence of identity. Further checks can be made in a local telephone directory, or even, in cases of doubt, with a credit reference agency. A combination of checks should be carried out to verify the client's name and address.
- 11.7 In the case of **UK corporate clients**, no further verification will be needed over and above normal commercial checks and due diligence if the company is:
- a. quoted on the London Stock Exchange or another recognised UK investment exchange; or
  - b. known to be the subsidiary of such a company; or
  - c. a member of a UK recognised investment exchange; or
  - d. a private company whose directors are already known to the firm.
- 11.8 The original or certified copy of the certificate of incorporation or a search of the file at the Companies Registration Office or an enquiry via a business information service will be sufficient to establish the identity of such a corporate client. Evidence that any individual representing the company has the necessary authority to do so should also be sought and retained.
- 11.9 In the case of a UK private company whose directors are not known to the firm, the identity of at least two directors/company secretary/share holders and/or at least two persons authorised to act on behalf of the company should be verified in line with the requirements for personal customers. A visit to the place of business may also be made to confirm the true nature of the business activities.
- 11.10 Guidance on the verification of identity of UK corporate clients which do not meet the above criteria is at Annex E.
- 11.11 In addition, it may be appropriate to make periodic enquiries to establish whether there has been a change to directors/share holders or to the original nature of the business/activity. Such changes could be significant in relation to potential money laundering activity.

11.12 In the case of **non UK companies**, the Joint Money Laundering Steering Group has produced guidance for the financial sector which is in Annex E.

11.13 Trust, fiduciary and nominee accounts are a popular vehicle for money laundering because of the scope for avoiding identification of ownership of funds and property. The identity of the underlying beneficiary should be established. Particular care is needed where there are accounts in offshore locations with strict bank secrecy or confidentiality rules. Trusts in jurisdictions without equivalent money laundering procedures in place will warrant additional enquiries. Where money is received on behalf of a trust, it would be prudent to establish the source of the monies and that the nature of the transaction is understood. It will also be prudent to ensure that payments are only made in accordance with the terms of the trust deed and that they are properly authorised in writing by the trustee.

## 12. *Record keeping*

12.1 *The procedures which each firm maintains must include a requirement that records of the identity of clients are maintained in respect of each client, and that records of each transaction are also maintained. The records must be kept for 5 years from the date on which the relevant transaction was completed.*

12.2 It is recommended that each firm compile a money laundering manual which should be given to each employee who has been identified as a relevant employee for the purpose of the Regulations. An example of what could be included in such a manual is attached at Annex D.

## **C. Helping to Combat Money Laundering**

- 13.1 The First EC Money Laundering Directive allows the Government to extend the Money Laundering Regulations to other areas of work in which solicitors are involved. For example, if evidence should show that the conveyancing process is particularly susceptible as a vehicle for money laundering, the Regulations may be extended to that area of work. Accordingly, when the Second Money Laundering Directive is in force (by the year 2001) the internal procedures set up by solicitors when engaging in investment business, may then cover other areas of their work involving the handling of money or other securities e.g. conveyancing.
- 13.2 Disclosure of suspicion should be made to the Economic Crime Unit of the National Criminal Intelligence Service (NCIS). The Economic Crime Unit is staffed jointly by six agencies including police and customs officers. The postal address is P.O. Box 8000, London SE11 5EN. The unit can be contacted on telephone 020 7238 8607. Urgent disclosures can be faxed on 020 7238 8262. Attached at Annex F is the recommended disclosure form and guidance notes.
- 13.3 All supervisory authorities including the Law Society via the Money Laundering Reporting Officer in the Investigation Unit at the Office for the Supervision of Solicitors have specific obligations under the Money Laundering Regulations to report to NCIS any information they obtain in the case of their investigations which in their opinion is or may be indicative of money laundering.
- 13.4 The Law Society, as a supervisory authority, also has an interest in the measures taken by firms to protect against money laundering because of the damage for firms and their clients. Involvement in money laundering, or the failure to have adequate policies and systems to guard against being used for money laundering, may call into question the prudence and integrity or fitness or the proper management of the firm.
- 13.5 The MLRO will have to receive, weigh up and consider any suspicious transaction report made to him or her and decide whether to make a disclosure to the authorities. Please see Annex H which contains further useful guidance for the MLRO to consider in relation to his responsibilities. The legislation specifically provides for immunity from breach of confidence should a report be made.
- 13.6 Once a disclosure has been made to NCIS, the firm is likely to receive a written acknowledgement from NCIS. Because of the normal delay between report and written acknowledgement, solicitors are free to continue with the transaction unless NCIS immediately refuse permission to transact. NCIS does not itself conduct investigations, it is an intelligence gathering agency. Your information, will be used by a police force or the Customs & Excise so keep it safe and separate from the client's file. In due course, perhaps some considerable time later, you may be ordered to produce your documentation to the police, normally as a result of an application to the Court for a production order under the relevant legislation e.g. under the Police and Criminal Evidence Act 1984, or the Drug Trafficking Act 1994.

## **D. An Investigation into Money Laundering**

14.1 Solicitors may be concerned about their position if they are contacted by the police, or the Customs and Excise, in relation to an investigation into money laundering. The relevant agency may be seeking disclosure of a firm's files on a particular client, or disclosure of their records kept pursuant to the Money Laundering Regulations. (Please see Section C "Helping to Combat Money Laundering" where the firm itself has made a suspicious transaction report to the authorities.)

14.2 Solicitors are bound by the law of contract, and their professional obligations to keep a client's affairs confidential. Solicitors are, therefore, prevented from volunteering any information to a law enforcement agency about a client's affairs. The important exceptions to the professional obligation arise where the solicitor:

- has the client's consent
- is compelled by a court order
- or has strong *prima facie* evidence that he/she was used or is being used for a fraudulent or criminal purpose by the client.

It will be rare for a solicitor to have this type of evidence without having suspected the client, or a third party of using the client, for money laundering. So where the police or Customs and Excise simply request a solicitor to volunteer information, or client files, or records of clients' identity or business transactions, information should not be given unless it falls clearly within these exceptions.

### **14.3 Court orders**

It is more usual for the relevant law enforcement agency to obtain a court order *ex parte* e.g. under Section 55 of the Drug Trafficking Act 1994 requiring the solicitor to produce records and files. The order will normally relate to non-privileged material and solicitors should always ensure that they comply with its terms, as their duty of confidentiality is overridden. If an order has been made by a Circuit Judge seeking access to material which the solicitor believes is the subject of legal professional privilege, application can be made on notice to the Circuit Judge issuing the original order, to seek its variation or discharge in accordance with Rule 25(B) of the Crown Court (Amendment) Rules 1986 and solicitors should always bear in mind the 'tipping off' offences before wishing to inform the client e.g. under Section 53 or Section 58 of the Drug Trafficking Act 1994.

14.4 The Criminal Justice Act 1988 Section 93H as amended by the Proceeds of Crime Act 1995 also allows the police to obtain an order for the production of documents *ex parte* where they are conducting an investigation into the whereabouts of the proceeds of criminal conduct. Solicitors should note that in the case of such an order under the Criminal Justice Act 1988 it is likely that an investigation into money laundering is in progress and the tipping off provisions referred to in Section 93D of the Criminal Justice Act 1988 will apply. The case of *R. v. Southwark Crown Court ex parte Bowles (1999) 2 All ER 193* established however that where the main or overriding reason for obtaining a production order is to investigate a crime and to obtain evidence to prosecute, the PACE procedure i.e. an application on notice, should be used.

14.5 Further guidance can also be found in Chapter 16 of the Guide to the Professional Conduct of Solicitors 1999 which deals with issues of confidentiality generally.

## **Further advice and Guidance**

**Professional Ethics**, The Law Society, Ipsley Court, Berrington Close, Redditch, Worcestershire, B98 0TD, Dx 19114 REDDITCH, telephone **0870 606 2577** or

**Practice Advice Service**, The Law Society, 113 Chancery Lane, London WC2A 1PL, Dx 56 LOND/CHANCERY LN, telephone **0870 606 2522** are available to provide assistance with these and other queries.

Training and reference materials can be obtained from:  
THE LAW SOCIETY:

1. Blue Warning Card reproduced at Annex 16D page 343 in the Guide to the Professional Conduct of Solicitors
2. Money Laundering Legislation: Guidance for Solicitors (2nd Edition). Further copies available from Professional Ethics (see above)
3. The 1999 Guide to the Professional Conduct of Solicitors (8th Edition)
4. This guidance is also available on the Law Society website at <http://www.lawsociety.org.uk>

## **JOINT MONEY LAUNDERING STEERING GROUP (JMLSG)**

Excellent and detailed guidance for the financial sector revised and consolidated guidance as at April 1999.

Contact the Joint Money Laundering Steering Group, JMLSG Department, BBA, P.O. Box 10, Wetherby, West Yorkshire, LS23 7EH, telephone 01937 840233, fax 01937 845381.

## **VIDEOS**

LEGAL NETWORK TV:

Programme 736

Programme 763 Money Laundering and Solicitors

TELEVISION EDUCATION NETWORK:

July/August 1994 Special Report – Money Laundering

## **GENERAL**

Direct reference should be made to the money laundering provisions of the Criminal Justice Act 1993 and the Money Laundering Regulations 1993 (attached in Annex A to this guidance).

There are numerous private conferences, seminars and books available on the subject of money laundering.

## **LEGAL ADVICE**

The legislation and criminal offences concerning money laundering are complex and have serious implications for each solicitor's firm. There can be no substitute for expert legal advice should problems arise of a legal nature.

## **MONEY LAUNDERING REGULATIONS 1993** (S.I. no. 1933)

### **Explanatory Notes**

These Regulations give effect to articles 3, 4, 10 and 11 of the Council Directive No. 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (OJ No. L166, 28.6.91, p.77). In so far as other new legislative provision was needed to implement the other provisions of the Directive, this provision is contained in the Criminal Justice Act 1993 (c.36). The Regulations come into force on 1 April 1994.

Various words and expressions used in the Regulations are defined in regulations 2, 3 and 4. Where business relationships (regulation 3) are formed, or one-off transactions are carried out in the course of "relevant financial business" (regulation 4) the persons carrying out that business are required to maintain certain procedures for the purposes of forestalling or preventing money laundering (these include the procedures set out in regulations 7, 9, 12 and 14). They are also required to train their employees in those procedures and, more generally, in the recognition of money laundering transactions and the law relating to money laundering. A person who fails to maintain the procedures and carry out the training is guilty of an offence (regulation 5). Where an offence is committed by a body corporate, partnership or unincorporated association, directors and managers of those bodies and certain other specified persons are guilty of the offence (regulation 6).

Except where an exemption is provided under regulation 10, satisfactory evidence of the identity of an applicant for business must be obtained in the circumstances described in regulation 7. Payment from (broadly speaking) a bank or building society account may be acceptable evidence of a person's identity where it is reasonable for the payment to be made by post (regulation 8). Where the applicant for business is, or may be, acting on behalf of another person, reasonable measures must be taken to obtain evidence of the identity of that other person (regulation 9). Provision as to when evidence is satisfactory for the purposes of the Regulations and as to how quickly it must be obtained is contained in regulation 11.

Records of all identification evidence that has been obtained and of all transactions with applicants for business that have been carried out must be kept for the period of five years (regulations 12 and 13).

Within each relevant financial business, a person must be identified as the person to whom a report is to be made of any information that gives rise to a knowledge or suspicion that money laundering is taking place. That person must consider the reports and, if he also forms the view that money laundering may be taking place, he is required to make a report to a constable (regulation 14).

Where supervisory authorities (regulation 15) obtain information indicative of money laundering, they are required to make a report to a constable (regulation 16). Inspectors and certain other persons who work with supervisory authorities under various statutory provisions are required to report any such information to the relevant supervisory authority or to a constable.

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*The Treasury being a government department designated [S.I. 1992/1711] for the purposes of section 2(2) of the European Communities Act 1972 [1972 c.68] in relation to measures relating to preventing the use of the financial system for the purpose of money laundering, in exercise of the powers conferred by that section hereby make the following regulations:-*

### **GENERAL**



## Citation and commencement

1. (1) These Regulations may be cited as the Money Laundering Regulations 1993.
- (2) These Regulations shall come into force on 1st April 1994.

## Interpretation

2. (1) In these Regulations -

“applicant for business” means a person seeking to form a business relationship, or carry out a one-off transaction, with a person who is carrying out relevant financial business in the United Kingdom;

“business relationship” has the meaning given by regulation 3 below;

“Case 1”, “Case 2”, “Case 3” and “Case 4” have the meanings given in regulation 7 below;

“constable” includes a person commissioned by the Commissioners of Customs and Excise;

“European institution” has the same meaning as in Banking Co-ordination (Second Council Directive) Regulations 1992 [S.I. 1992/3218];

“insurance business” means long term business within the meaning of the Insurance Companies Act 1982 [1982 c.50];

“the Money Laundering Directive” means the Council Directive on prevention of the use of the financial system for the purpose of money laundering (No. 91/308/EEC)[OJ No. L166, 28.6.91, p.77];

“one-off transaction” means any transaction other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of relevant financial business;

“relevant financial business” has the meaning given by regulation 4 below; and

“supervisory authority” has the meaning given by regulation 15 below.

- (2) In these Regulations “ecu” means the European currency unit as defined in article 1 of Council Regulation No. 3180/78/EEC [OJ No. L379, 30.12.78, p.1: the relevant amending instrument is Council Regulation (EEC) No. 1971/89, OJ No. L189, 4.7.89, p.1]; and the exchange rates as between the ecu and the currencies of the member States to be applied for each year beginning on 31st December shall be the rates applicable on the last day of the preceding October for which rates for the currencies of all the member States were published in the Official Journal of the Communities.
- (3) In these Regulations, except in so far as the context otherwise requires, “money laundering” means doing any act which constitutes an offence under -
  - (a) section 23A or 24 of the Drug Trafficking Offences Act 1986 [1986 c.32; section 23A was inserted by section 16 of the Criminal Justice Act 1993 (c.36); section 24 was

amended by section 103(1) of, and paragraphs 1 and 13 of Schedule 5 to, the Criminal Justice Act 1988 (c.33)] (which relate to the handling etc of proceeds of drug trafficking);

- (b) section 42A or 43 of the Criminal Justice (Scotland) Act 1987 [1987 c.41; section 42A was inserted by section 17 of the Criminal Justice Act 1993 (c.36)] (which relate to the handling etc of proceeds of drug trafficking);
- (c) section 93A, 93B or 93C of the Criminal Justice Act 1988 [1988 c.33; sections 93A, 93B and 93C were inserted by section 29 of the Criminal Justice Act 1993 (c.36); section 93E of the 1988 Act (which was inserted by section 33 of the 1993 Act) makes provision as to the application in Scotland of sections 93A to 93C] (which relate to the handling etc of proceeds of certain other criminal conduct);
- (d) section 11 of the Prevention of Terrorism (Temporary Provisions) Act 1989 [1989 c.4] (which relates to financial assistance for terrorism);
- (e) section 14 of the Criminal Justice (International Co-operation) Act 1990 [1990 c.5] (concealing or transferring proceeds of drug trafficking);
- (f) Article 29 or 30 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 [S.I. 1990/2588(N.I.17)] (which relate to the handling etc of proceeds of drug trafficking);
- (g) section 53 or 54 of the Northern Ireland (Emergency Provisions) Act 1991 [1991 c.24; sections 53 and 54 were amended by section 47 of the Criminal Justice Act 1993 (c.36)] (which relate to the handling etc of proceeds of terrorist-related activities); or
- (h) any provision, whenever made, which has effect in Northern Ireland and corresponds to any of the provisions mentioned in sub-paragraph (a) or (c) above;

or, in the case of an act done otherwise than in England and Wales, Scotland or, as the case may be, Northern Ireland would constitute such an offence if done in England and Wales, Scotland or Northern Ireland.

- (4) The reference in paragraph (3) above to doing any act which would constitute an offence under the provisions mentioned in sub-paragraph (c) of that paragraph shall, for the purposes of these Regulations, be construed as a reference to doing any act which would constitute an offence under those provisions if, for the definition of “criminal conduct” in section 93A(7) of the Criminal Justice Act 1988, there were substituted-

“(7) In this Part of this Act ‘criminal conduct’ means -

- (a) conduct which constitutes an offence to which this Part of this Act applies; or
- (b) conduct which -
  - (i) would constitute such an offence if it had occurred in England and Wales or (as the case may be) Scotland; and
  - (ii) contravenes the law of the country in which it occurred.”

- (5) For the purposes of these Regulations, any provision having effect in Northern Ireland which corresponds to the provisions referred to in paragraph (3) (c) above shall be construed as if it had been amended by a provision which corresponds to paragraph (4) above, with appropriate modifications.
- (6) For the purposes of this regulation, a business relationship formed by any person acting in the course of relevant financial business is an established business relationship where that person has obtained, under procedures maintained by him in accordance with regulation 7 below, satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business.

### **Business relationships**

- 3. (1) Any reference in this regulation to an arrangement between two or more persons is a reference to an arrangement in which at least one person is acting in the course of a business.
- (2) For the purposes of these Regulations, “business relationship” means any arrangement between two or more persons where -
  - (a) the purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis; and
  - (b) the total amount of any payment or payments to be made by any person to any other in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made.

### **Relevant financial business**

- 4. (1) For the purposes of these Regulations, “relevant financial business” means, subject to paragraph (2) below, the business of engaging in one or more of the following -
  - (a) deposit-taking business carried on by a person who is for the time being authorised under the Banking Act 1987 [1987 c.22];
  - (b) acceptance by a building society of deposits made by any person (including the raising of money from members of the society by the issue of shares);
  - (c) business of the National Savings Bank;
  - (d) business carried on by a credit union within the meaning of the Credit Unions Act 1979 [1979 c.34] or the Credit Unions (Northern Ireland) Order 1985 [S.I.1985/1205 (N.I. 12)];
  - (e) any home regulated activity carried on by a European institution in respect of which the requirements of paragraph 1 of Schedule 2 to the Banking Co-ordination (Second Council Directive) Regulations 1992 [S.I.1992/3218] have been complied with;
  - (f) investment business within the meaning of the Financial Services Act 1986 [1986 c.60];

- (g) any activity carried on for the purpose of raising money authorised to be raised under the National Loans Act 1968 [1968 c.13] under the auspices of the Director of National Savings;
  - (h) any of the activities in points 1 to 12, or 14, of the Annex to the Second Banking Co-ordination Directive (the text of which is, for convenience of reference, set out in the Schedule to these Regulations), other than an activity falling within sub-paragraphs (a) to (g) above;
  - (i) insurance business carried on by a person who has received official authorisation pursuant to Article 6 or 27 of the First Life Directive.
- (2) A business is not relevant financial business in so far as it consists of -
- (a) any of the following activities carried on by a society registered under the Industrial and Provident Societies Act 1965 [1965 c.12] -
    - (i) the issue of withdrawable share capital within the limit set by section 6 of that Act [Section 6 has been amended by the Industrial and Provident Societies (Increase in Shareholding Limit) Order 1981 (S.I.1981/395) and by section 4 of, and paragraph 8 of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71)]; or
    - (ii) the acceptance of deposits from the public within the limit set by section 7(3) of that Act [Section 7(3) has been amended by the Industrial and Provident Societies (Increase in Deposit-taking Limits Order 1981 (S.I. 1981/394)];
  - (b) the issue of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act (Northern Ireland) 1969 [1969 c.24; section 6 has been amended by the Industrial and Provident Societies (Increase in Shareholding Limit) Regulations (Northern Ireland) 1991 (S.R.1991 No. 375)] by a society registered under that Act;
  - (c) activities carried on by the Bank of England;
  - (d) in relation to any person who is an exempted person for the purposes of section 45 of the Financial Services Act 1986 [1986 c.60; section 45 has been amended by section 78 (1) of, and paragraph 14 of Schedule 6 to the Charities Act 1992 (c.41) and by regulation 55 of, and paragraph 8 of Schedule 9 to, the Banking Co-ordination (Second Council Directive) Regulations 1992 (S.I.1992/3218)] (miscellaneous exemptions for holders of certain judicial and other offices), such of the activities as are specified in that section in relation to that person; or
  - (e) in relation to any person who is an exempted person for the purposes of any order made under section 46 of the Financial Services Act 1986 [at the date on which these Regulations were laid, the following orders had been made under section 46 of the Financial Services Act 1986: S.I.s 1988/350, 1988/723, 1989/431, 1990/696, 1990/1492, 1990/2235, 1991/493 and 1991/1516] which was made before the date on which these Regulations come into force, any activities carried on by him or, as the case may be, such of the activities as are specified in such an order in relation to him.
- (3) For the purposes of paragraph (1) (f) above, any reference in these Regulations to the carrying on of relevant financial business in the United Kingdom shall be construed in accordance with section 1(3) of the Financial Services Act 1986.

(4) In this regulation -

“building society” has the same meaning as in the Building Societies Act 1986;

“deposit-taking business” has the same meaning as in the Banking Act 1987;

“the First Life Directive” means the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (No. 79/267/EEC) [OJ No. L63, 13.3.79, p.I, as amended by the 1979 Act of Accession (Greece) (OJ No. L291, 19.11.79, p.17), the 1985 Act of Accession (Portugal and Spain) (OJ No. L302, 15.11.85, p.23) and Council Directive 90/6191 EEC]; and

“the Second Banking Co-ordination Directive” means the Second Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (No. 89/646/EEC)[OJ No. L386, 30.12.89, p.1].

## **SYSTEMS AND TRAINING TO PREVENT MONEY LAUNDERING**

### **Systems and training to prevent money laundering**

5. (1) No person shall, in the course of relevant financial business carried on by him in the United Kingdom, form a business relationship, or carry out a one-off transaction, with or for another unless that person -
- (a) maintains the following procedures established in relation to that business -
    - (i) identification procedures in accordance with regulations 7 and 9 below;
    - (ii) record-keeping procedures in accordance with regulation 12 below;
    - (iii) except where the person concerned is an individual who in the course of relevant financial business does not employ or act in association with any other person, internal reporting procedures in accordance with regulation 14 below; and
    - (iv) such other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering;
  - (b) takes appropriate measures from time to time for the purposes of making employees whose duties include the handling of relevant financial business aware of -
    - (i) the procedures under sub-paragraph (a) above which are maintained by him and which relate to the relevant financial business in question, and
    - (ii) the enactments relating to money laundering; and

- (c) provides such employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money laundering.
- (2) Any person who contravenes this regulation shall be guilty of an offence and liable -
  - (a) on conviction on indictment, to imprisonment not exceeding a term of two years or a fine or both;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (3) In determining whether a person has complied with any of the requirements of paragraph (1) above, a court may take account of -
  - (a) any relevant supervisory or regulatory guidance which applies to that person;
  - (b) in a case where no guidance falling within sub-paragraph (a) above applies, any other relevant guidance issued by a body that regulates, or is representative of, any trade, profession, business or employment carried on by that person.
- (4) In proceedings against any person for an offence under this regulation, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (5) In this regulation -
 

“enactments relating to money laundering” means the enactments referred to in regulation 2(3) above and the provision of these Regulations; and

“supervisory or regulatory guidance” means guidance issued, adopted or approved by a supervisory authority.

### **Offences by bodies corporate, partnerships and unincorporated associations**

- 6. (1) Where an offence under regulation 5 above committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by the members, paragraph (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of a body corporate.
- (3) Where an offence under regulation 5 above committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, a partner in the partnership or (as the case may be) a person concerned in the management or control of the association, he, as well as the partnership or association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.



## IDENTIFICATION PROCEDURES

### Identification procedures; business relationships and transactions

7. (1) Subject to regulations 8 and 10 below, identification procedures maintained by a person are in accordance with this regulation if in Cases 1 to 4 set out below they require, as soon as is reasonably practicable after contact is first made between that person and an applicant for business concerning any particular business relationship or one-off transaction..
- (a) the production by the applicant for business of satisfactory evidence of his identity; or
  - (b) the taking of such measures specified in the procedures as will produce satisfactory evidence of his identity;  
and the procedures are, subject to paragraph (6) below, in accordance with this regulation if they require that where that evidence is not obtained the business relationship or one-off transaction in question shall not proceed any further.
- (2) Case 1 is any case where the parties form or resolve to form a business relationship between them.
- (3) Case 2 is any case where, in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering, or that the transaction is carried out on behalf of another person engaged in money laundering.
- (4) Case 3 is any case where, in respect of any one-off transaction, payment is to be made by or to the applicant for business of the amount of ecu 15,000 or more.
- (5) Case 4 is any case where, in respect of two or more one-off transactions -
- (a) it appears at the outset to a person handling any of the transactions -
    - (i) that the transactions are linked, and
    - (ii) that the total amount, in respect of all of the transactions, which is payable by or to the applicant for business is ecu 15,000 or more; or
  - (b) at any later stage, it comes to the attention of such a person that paragraphs (i) and (ii) of sub-paragraph (a) above are satisfied.
- (6) The procedures referred to in paragraph (1) above are in accordance with this regulation if, when a report is made in circumstances falling within Case 2 (whether in accordance with regulation 14 or directly to a constable), they provided for steps to be taken in relation to the one-off transaction in question in accordance with any directions that may be given by a constable.
- (7) In these Regulations references to satisfactory evidence of a person's identity shall be construed in accordance with regulation 11(1) below.

### Payment by post, etc.



8 (1) Where satisfactory evidence of the identity of an applicant for business would, apart from this paragraph, be required under identification procedures in accordance with regulation 7 above but -

(a) the circumstances are such that a payment is to be made by the applicant for business; and

(b) it is reasonable in all the circumstances -

(i) for the payment to be sent by post or by any electronic means which is effective to transfer funds; or

(ii) for the details of the payment to be sent by post, to be given on the telephone or to be given by any other electronic means;

then, subject to paragraph (2) below, the fact that the payment is debited from an account held in the applicant's name at an institution mentioned in paragraph (4) below (whether the account is held by the applicant alone or jointly with one or more other persons) shall be capable of constituting the required evidence of identity.

(2) Paragraph (1) above shall not have effect to the extent that -

(a) the circumstances of the payment fall within Case 2; or

(b) the payment is made by any person for the purpose of opening a relevant account with an institution falling within paragraph (4)(a) or (b) below.

(3) For the purposes of paragraph (1)(b) above, it shall be immaterial whether the payment or its details are sent or given to a person who is bound by regulation 5(1) above or to some other person acting on his behalf.

(4) The institutions referred to in paragraph (1) above are -

(a) an institution which is for the time being authorised by the Bank of England under the Banking Act 1987 [1987 c.22] or by the Building Societies Commission under the Building Societies Act 1986 [1986 c.53];

(b) a European authorised institution within the meaning of the Banking Co-ordination (Second Council Directive) Regulations 1992 [S.I.1992/3218]; or

(c) any other institution which is an authorised credit institution.

(5) For the purposes of this regulation -

“authorised credit institution” means a credit institution, as defined in Article 1 of the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (77/780/EEC) [OJ No. L322, 17.12.77, p.30, as amended by Council Directive No. 86/524/EEC (OJ No. L309, 4.11.86, p.15) and by Council Directive No. 89/646/EEC (OJ No. L386, 30.12.89, p.1.)], which is authorised to carry on the business of a credit institution by a competent authority of a member state; and

“relevant account” means an account from which a payment may be made by any means to a person other than the applicant for business, whether such a payment -

- (a) may be made directly to such a person from the account by or on behalf of the applicant for business; or
- (b) may be made to such a person indirectly as a result of -
  - (i) a direct transfer of funds from an account from which no such direct payment may be made to another account, or
  - (ii) a change in any of the characteristics of the account.

### **Identification procedures; transactions on behalf of another**

- 9 .(1) This regulation applies where, in relation to a person who is bound by regulation 5(1) above, an applicant for business is or appears to be acting otherwise than as principal.
- (2) Subject to regulation 10 below, identification procedures maintained by a person are in accordance with this regulation if, in a case to which this regulation applies, they require reasonable measures to be taken for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting.
- (3) In determining, for the purposes of paragraph (2) above, what constitutes reasonable measures in any particular case regard shall be had to all the circumstances of the case and, in particular, to best practice which, for the time being, is followed in the relevant field of business and which is applicable to those circumstances.
- (4) Without prejudice to the generality of paragraph (3) above, if the conditions mentioned in paragraph (5) below are fulfilled in relation to an applicant for business who is, or appears to be, acting as an agent for a principal (whether undisclosed or disclosed for reference purposes only) it shall be reasonable for a person bound by regulation 5(1) above to accept a written assurance from the applicant for business to the effect that evidence of the identity of any principal on whose behalf the applicant for business may act in relation to that person will have been obtained and recorded under procedures maintained by the applicant for business.
- (5) The conditions referred to in paragraph (4) above are that, in relation to the business relationship or transaction in question, there are reasonable grounds for believing that the applicant for business -
- (a) acts in the course of a business in relation to which an overseas regulatory authority exercises regulatory functions; and
  - (b) is based or incorporated in, or formed under the law of, a country other than a member State in which there are in force provisions at least equivalent to those required by the Money Laundering Directive.
- (6) In paragraph (5) above, “overseas regulatory authority” and “regulatory functions” have the same meaning as in section 82 of the Companies Act 1989 [1989 c.40; section 82 was amended by section 79 of, and paragraph 16 of Schedule 5 to, the Criminal Justice Act 1993 (c.36); there are no other relevant amendments].

## Identification procedures; exemptions

10. (1) Subject to paragraph (2) below, identification procedures under regulations 7 and 9 above shall not require any steps to be taken to obtain evidence of any person's identity -
- (a) where there are reasonable grounds for believing that the applicant for business is a person who is bound by the provisions of regulation 5(1) above;
  - (b) where there are reasonable grounds for believing that the applicant for business is otherwise a person who is covered by the Money Laundering Directive;
  - (c) where any one-off transaction is carried out with or for a third party pursuant to an introduction effected by a person who has provided an assurance that evidence of the identity of all third parties introduced by him will have been obtained and recorded under procedures maintained by him, where that person identifies the third party and where -
    - (i) that person falls within sub-paragraph (a) or (b) above; or
    - (ii) there are reasonable grounds for believing that the conditions mentioned in regulation 9(5)(a) and (b) above are fulfilled in relation to him;
  - (d) where the person who would otherwise be required to be identified, in relation to a one-off transaction, is the person to whom the proceeds of that transaction are payable but to whom no payment is made because all of those proceeds are directly reinvested on his behalf in another transaction -
    - (i) of which a record is kept, and
    - (ii) which can result only in another reinvestment made on that person's behalf or in a payment made directly to that person;
  - (e) in relation to insurance business consisting of a policy of insurance in connection with a pension scheme taken out by virtue of a person's contract of employment or occupation where the policy -
    - (i) contains no surrender clause, and
    - (ii) may not be used as collateral for a loan;
  - (f) in relation to insurance business in respect of which a premium is payable in one instalment of an amount not exceeding ecu 2,500; or
  - (g) in relation to insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed ecu 1,000.
- (2) Nothing in this regulation shall apply in circumstances falling within Case 2.
- (3) In this regulation "calendar year" means a period of twelve months beginning on 31st December.

## **Identification procedures; supplementary provisions**

11. (1) For the purposes of these Regulations, evidence of identity is satisfactory if -
- (a) it is reasonably capable of establishing that the applicant is the person he claims to be; and
  - (b) the person who obtains the evidence is satisfied, in accordance with the procedures maintained under these Regulations in relation to the relevant financial business concerned, that it does establish that fact.
- (2) In determining for the purposes of regulation 7(1) above the time span in which satisfactory evidence of a person's identity has to be obtained, in relation to any particular business relationship or one-off transaction, all the circumstances shall be taken into account including, in particular -
- (a) the nature of the business relationship or one-off transaction concerned;
  - (b) the geographical locations of the parties;
  - (c) whether it is practical to obtain the evidence before commitments are entered into between the parties or before money passes;
  - (d) in relation to Case 3 or 4, the earliest stage at which there are reasonable grounds for believing that the total amount payable by an applicant for business is ecu 15,000 or more.

## **RECORD-KEEPING PROCEDURES**

### **Record-keeping procedures**

12. (1) Record-keeping procedures maintained by a person are in accordance with this regulation if they require the keeping, for the prescribed period, of the following records -
- (a) in any case where, in relation to any business relationship that is formed or one-off transaction that is carried out, evidence of a person's identity is obtained under procedures maintained in accordance with regulation 7 or 9 above, a record that indicates the nature of the evidence and -
    - (i) comprises a copy of the evidence;
    - (ii) provides such information as would enable a copy of it to be obtained; or
    - (iii) in a case where it is not reasonably practicable to comply with paragraph (i) or (ii) above, provides sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained; and
  - (b) a record containing details relating to all transactions carried out by that person in the course of relevant financial business.
- (2) For the purposes of paragraph (1) above, the prescribed period is, subject to paragraph (3) below, the period of at least five years commencing with -

- (a) in relation to such records as are described in sub-paragraph (a), the date on which the relevant business was completed within the meaning of paragraph (4) below; and
  - (b) in relation to such records as are described in sub-paragraph (b), the date on which all activities taking place in the course of the transaction in question were completed.
- (3) Where a person who is bound by the provisions of regulation 5(1) above -
- (a) forms a business relationship or carries out a one-off transaction with another person;
  - (b) has reasonable grounds for believing that that person has become insolvent; and
  - (c) after forming that belief, takes any step for the purpose of recovering all or part of the amount of any debt payable to him by that person which has fallen due;
- the prescribed period for the purposes of paragraph (1) above is the period of at least five years commencing with the date on which the first such step is taken.
- (4) For the purposes of paragraph (2)(a) above, the date on which relevant business is completed is, as the case may be-
- (a) in circumstances falling within Case 1, the date of the ending of the business relationship in respect of whose formation the record under paragraph (1)(a) above was compiled;
  - (b) in circumstances falling within Case 2 or 3, the date of the completion of all activities taking place in the course of the one-off transaction in respect of which the record under paragraph (1)(a) above was compiled;
  - (c) in circumstances falling within Case 4, the date of the completion of all activities taking place in the course of the last one-off transaction in respect of which the record under paragraph (1)(a) above was compiled;

and where the formalities necessary to end a business relationship have not been observed, but a period of five years has elapsed since the date on which the last transaction was carried out in the course of that relationship, then the date of the completion of all activities taking place in the course of that last transaction shall be treated as the date on which the relevant business was completed.

### **Record-keeping procedures; supplementary provisions**

13. (1) For the purposes of regulation 12(3)(b) above, a person shall be taken to be insolvent if, but only if, in England and Wales -
- (a) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
  - (b) an order has been made with respect to him under section 112, 112A or 112B of the County Courts Act 1984 [1984 c.28; section 112 was amended by section 220(2) of the Insolvency Act 1985 (c.65); and section 112 was amended, and sections 112A and 112B were inserted, by section 13 of the Courts and Legal Services Act 1990 (c.41)]

(administration orders, orders restricting enforcement and administration orders with composition provisions);

- (c) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986 [1986 c.45] (insolvent estates of deceased persons); or
  - (d) where that person is a company, a winding up order or an administration order has been made or a resolution for voluntary winding up has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or a voluntary arrangement proposed for the purpose of Part I of the Insolvency Act 1986 has been approved under that Part, or a compromise or arrangement in accordance with section 425 of the Companies Act 1985 [1985 c.6; section 425 was amended by section 109(1) of, and paragraph 11 of Schedule 6 to, the Insolvency Act 1986 (c.45)] has taken effect.
- (2) For the purposes of regulation 12(3)(b) above, a person shall be taken to be insolvent if, but only if, in Scotland -
- (a) his estate has been sequestrated, he has granted a trust deed for the benefit of his creditors or he has made a composition or arrangement for the benefit of his creditors; or
  - (b) where that person is a company, a winding up order or an administration order has been made or a resolution for voluntary winding up has been passed with respect to it, or a receiver has been appointed under a floating charge over any property of the company, or a voluntary arrangement proposed for the purpose of Part I of the Insolvency Act 1986 has been approved under that Part, or a compromise or arrangement in accordance with section 425 of the Companies Act 1985 has taken effect.
- (3) For the purposes of regulation 12(3)(b) above, a person shall be taken to be insolvent if, but only if, in Northern Ireland -
- (a) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
  - (b) an administration order has been made with respect to him under Article 80 of the Judgments Enforcement (Northern Ireland) Order 1981 [S.I.1981/226 (N.I.6)] (power to made administration order on application of debtor);
  - (c) he has died and his estate falls to be administered in accordance with an order under Article 365 of the Insolvency (Northern Ireland) Order 1989 [S.I.1989/2405 (N.I.19)] (insolvent estates of deceased persons); or
  - (d) where that person is a company, a winding up order or an administration order has been made or a resolution for voluntary winding up has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or a voluntary arrangement proposed for the purpose of Part II of the Insolvency (Northern Ireland) Order 1988 has been approved under that Part, or a compromise or

arrangement in accordance with Article 418 of the Companies (Northern Ireland) Order 1986 [S.I. 1986/ 1032 (N.I.6)] has taken effect.

- (4) Where a person bound by regulation 5(1) above -
  - (a) is an appointed representative; and
  - (b) is not -
    - (i) an authorised person within the meaning of the Financial Services Act 1986 [1986 c.60],
    - (ii) authorised under the Building Societies Act 1986 [1986 c.53] or the Banking Act 1987 [1987 c.22], or
    - (iii) a European institution;

it shall be the responsibility of the appointed representative's principal to ensure that record-keeping procedures in accordance with regulation 12 above are maintained in respect of any relevant financial business carried out by the appointed representative which is investment business carried on by him for which the principal has accepted responsibility in writing under section 44 of the Financial Services Act 1986.

- (5) Where record-keeping procedures in accordance with regulation 12 above are not maintained in respect of business relationships formed, and one-off transactions carried out, in the course of such relevant financial business as is referred to in paragraph (4) above, an appointed representative's principal shall be regarded as having contravened regulation 5 in respect of those procedures and he, as well as the appointed representative, shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.
- (6) Section 44(2) of the Financial Services Act 1986 (construction of references to appointed representative, his principal and investment business carried out by an appointed representative) shall apply for the purposes of paragraphs (4) and (5) above as it applies for the purposes of that Act.

## **INTERNAL REPORTING PROCEDURES**

### **Internal reporting procedures**

14. Internal reporting procedures maintained by a person are in accordance with this regulation if they include provision -

- (a) identifying a person ('the appropriate person') to whom a report is to be made of any information or other matter which comes to the attention of a person handling relevant financial business and which, in the opinion of the person handling that business, gives rise to a knowledge or suspicion that another person is engaged in money laundering;
- (b) requiring that any such report be considered in the light of all other relevant information by the appropriate person, or by another designated person, for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;

- (c) for any person charged with considering a report in accordance with sub-paragraph (b) above to have reasonable access to other information which may be of assistance to him and which is available to the person responsible for maintaining the internal reporting procedures concerned; and
- (d) for securing that the information or other matter contained in a report is disclosed to a constable where the person who has considered the report under the procedures maintained in accordance with the preceding provisions of this regulation knows or suspects that another person is engaged in money laundering.



## **DUTY OF SUPERVISORY AUTHORITIES TO REPORT EVIDENCE OF MONEY LAUNDERING**

### **Supervisory authorities**

15. (1) References in these Regulations to supervisory authorities shall be construed in accordance with the following provisions.
- (2) For the purposes of these Regulations, each of the following is a supervisory authority -
- (a) the Bank of England;
  - (b) the Building Societies Commission;
  - (c) a designated agency within the meaning of the Financial Services Act 1986 [1986 c.60];
  - (d) a recognised self-regulating organisation within the meaning of the Financial Services Act 1986;
  - (e) a recognised professional body within the meaning of the Financial Services Act 1986;
  - (f) a transferee body within the meaning of the Financial Services Act 1986;
  - (g) a recognised self-regulating organisation for friendly societies within the meaning of the Financial Services Act 1986;
  - (h) the Secretary of State;
  - (i) the Treasury;
  - (j) the Council of Lloyd's;
  - (k) the Director General of Fair Trading;
  - (l) the Friendly Societies Commission;
  - (m) the Chief Registrar of Friendly Societies;
  - (n) the Central Office of the Registry of Friendly Societies;
  - (o) the Registrar of Friendly Societies for Northern Ireland;
  - (p) the Assistant Registrar of Friendly Societies for Scotland.
- (3) These Regulations apply to the Secretary of State in the exercise, in relation to any person carrying on relevant financial business, of his functions under the enactments relating to insurance companies, companies or insolvency or under the Financial Services Act 1986.

### **Supervisors etc. to report evidence of money laundering**

16. (1) Subject to paragraph (2) below, where a supervisory authority -

- (a) obtains any information; and
  - (b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering, the authority shall, as soon as is reasonably practicable, disclose that information to a constable.
- (2) Where any person is a secondary recipient of information obtained by a supervisory authority, and that person forms such an opinion as is mentioned in paragraph (1)(b) above, that person may disclose the information to a constable.
- (3) Where any person within paragraph (6) below -
  - (a) obtains any information whilst acting in the course of any investigation, or discharging any functions, to which his appointment or authorisation relates; and
  - (b) is of the opinion that the information indicates that any person has or may have been engaged in money laundering,

that person shall, as soon as is reasonably practicable, either disclose that information to a constable or disclose that information to the supervisory authority by whom he was appointed or authorised.
- (4) Any disclosure made by virtue of the preceding provisions of this regulation shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (5) Any information -
  - (a) which has been disclosed to a constable by virtue of the preceding provisions of this regulation; and
  - (b) which would, apart from the provisions of paragraph (4) above, be subject to such a restriction as is mentioned in that paragraph;

may be disclosed by the constable, or any person obtaining the information directly or indirectly from him, in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings, but not otherwise.
- (6) Persons falling within this paragraph are -
  - (a) a person or inspector appointed under section 17 of the Industrial Assurance Act 1923 [1923 c.8 (13 & 14 Geo.5); section 17 was amended by the Statute Law Revision Act 1950 (c.6), by sections 5(5) and 14(2) of, and Schedule 3 to, the Friendly Societies Act 1971 (c.66) and by section 100 of, and paragraphs 1, 5(2) and 6 of Schedule 19 to, the Friendly Societies Act 1992 (c.40)] or section 65 or 66 of the Friendly Societies Act 1992 [1992 c.40];
  - (b) an inspector appointed under section 49 of the Industrial and Provident Societies Act 1965 [1965 c.12] or section 18 of the Credit Unions Act 1979 [1979 c.34];
  - (c) an inspector appointed under section 431, 432, 442 or 446 of the Companies Act 1985 [1985 c.6; section 432 was amended by section 55 of the Companies Act 1989 (c.40); section 442 was amended by section 62 of the 1989 Act; there are amendments to section 446 in sections 182 and 212 of, and in paragraph 8 of Schedule 13, paragraph 21 of Schedule 16, Part I of Schedule 17 to the Financial Services Act 1986 (c.60), in

section 212 of, and Schedule 24 to, the Companies Act 1989 (c.40) and in regulation 82 of, and in paragraph 16 of Schedule 10 to, the Banking Co-ordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218)] or under Article 424, 425, 435 or 439 of the Companies (Northern Ireland) Order 1986 [S.I. 1986/1032 (N.I.6); Article 425 was amended by article 3 of the Companies (No.2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10); Article 435 was amended by Article 10 of that Order; Article 439 was amended by Article 113 of, and Schedule 6 to, that Order];

- (d) a person or inspector appointed under section 55 or 56 of the Building Societies Act 1986 [1986 c.53];
  - (e) an inspector appointed under section 94 or 177 of the Financial Services Act 1986 [1986 c.60; section 94 was amended by sections 72 and 212 of, and Schedule 24 to, the Companies Act 1989 (c.40); section 177 was amended by section 74 of that Act];
  - (f) a person appointed under section 41 of the Banking Act 1987 [1987 c.22; section 41 was amended by regulation 37 of the Banking Co-ordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218)]; and
  - (g) a person authorised to require the production of documents under section 44 of the Insurance Companies Act 1982 [1982 c.50; section 44 was amended by section 77(1) and (2) of the Companies Act 1989 (c.40)], section 447 of the Companies Act 1985 [1985 c.6; section 447 was amended by sections 63(1)-(7) and 212 of, and Schedule 24 to, the Companies Act 1989 (c.40)], section 106 of the Financial Services Act 1986 [1986 c.60; section 106 was amended by section 73 of the Companies Act 1989 (c.40) and by regulation 55 of, and paragraph 29 of Schedule 9 to, the Banking Co-ordination (Second Council Directive) Regulations 1992], Article 440 of the Companies (Northern Ireland) Order 1986 [S.I. 1986/1032 (N.I. 6); Article 440 was amended by Articles 11 and 113 of, and Schedule 6 to, the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)] or section 84 of the Companies Act 1989 [1989 c.40].
- (7) In this regulation “secondary recipient”, in relation to information obtained by a supervisory authority, means any person to whom that information has been passed by the authority.

## **TRANSITIONAL PROVISIONS**

### **Transitional provisions**

17. (1) Nothing in these Regulations shall require a person who is bound by regulation 5(1) above to maintain procedures in accordance with regulations 7 and 9 which require evidence to be obtained, in respect of any business relationship formed by him before the date on which these Regulations come into force, as to the identity of the person with whom that relationship has been formed.
- (2) For the purposes of regulation 2(6) above, any business relationship referred to in paragraph (1) above shall be treated as if it were an established business relationship.
- (3) In regulation 10(1)(g), the reference to the total payable in respect of any calendar year not exceeding ecu 1,000 shall, for the period commencing with the coming into force of these regulations and ending with 30th December 1994, be construed as a reference to the total payable in respect of that period not exceeding ecu 750.

**SCHEDULE  
REGULATION 4(1)**

**“ANNEX**

**LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION**

1. Acceptance of deposits and other repayable funds from the public.
2. Lending [including inter alia:
  - consumer credit
  - mortgage credit
  - factoring with or without recourse
  - financing of commercial transactions (including forfeiting)].
3. Financial leasing.
4. Money transmission services.
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).
6. Guarantees and commitments.
7. Trading for own account or for account of customers in:
  - (a) money market instruments (cheques, bills, CDs, etc.);
  - (b) foreign exchange;
  - (c) financial futures and options;
  - (d) exchange and interest rate instruments;
  - (e) transferable securities.
8. Participation in securities issues and the provision of services related to such issues [This paragraph represents the text as amended in accordance with the corrigendum published in the Official Journal of the European Communities No. L 83 of 30 March 1990.].
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.

13. Credit reference services.
14. Safe custody services.”

## **COMPLIANCE COST ASSESSMENT**

(This note is not part of the Regulations)

### **The purpose and expected benefits of the Regulations**

1. The Regulations require financial institutions to put in place systems to deter money laundering, and to assist the relevant authorities to detect money laundering activities. They are an essential part of the measures taken by the UK to implement the EC Directive on Money Laundering. Other provisions to implement the Directive are included in the Criminal Justice Act 1993. The Regulations will be made under section 2(2) of the European Communities Act 1972.

### **Business sectors affected**

2. The Regulations will affect the financial and professional services sector. Within this sector, they will apply to:
  - all banks, building societies and other credit institutions;
  - all individuals and firms authorised to conduct investment business under the Financial Services Act 1986;
  - all insurance companies covered by the EC Life Directives, including the life business of Lloyd's of London;
  - all other undertakings carrying out any of the range of financial activities listed in the annex to the Second Banking Supervision Directive. This includes notably *bureaux de change* and money transmission services.

### **Compliance costs**

3. Costs are likely to increase in the areas of administration, training and provision of storage space for business records.

### **Administration**

4. Institutions will be required to obtain evidence of identity from their customers when entering into a business relationship or carrying out a transaction or series of linked transactions of ECU 15,000 or more. They will also be required to keep records of identification evidence and financial dealings for five years (the minimum period required by the Directive).
5. Some institutions may have to introduce new systems of control as a result, for example revisions of computer software, which they would not otherwise have introduced, or introduced so quickly.
6. For members of self-regulatory organisations which are already required to identify customers, and for other firms which may require identification for professional reasons, the main change is likely to be in the nature of the evidence required and the time for which it must be kept.

7. Most banks and building societies, and some other financial institutions, already have well-developed procedures in these areas. The cost of compliance for these firms will be relatively low.

### **Training**

8. The institutions affected will be required to give all relevant staff initial and recurrent training in the reporting and customer identification requirements of the Regulations, in the legislative position, and in the company's anti-money laundering policies and procedures. There will be one-off costs in producing new procedures and training manuals.

### **Provision of storage space**

9. The record-keeping requirement will have implications for the amount of storage space needed. Records may be stored in any form that is admissible as evidence in court.

### **Estimated compliance costs for a "typical" business in the sectors principally affected**

10. The expense incurred will depend on the nature of existing measures of control and is likely to vary considerably. Furthermore, it is difficult to produce estimates for "typical" institutions as, even within the different areas of financial services activity the Regulations will apply to a wide variety of businesses in terms of staff numbers, volume of transactions, and existing degree of money laundering compliance. The tables at the end of this assessment are derived from figures supplied by a limited number of individual institutions and trade associations. A large majority of those consulted said that they were unable to provide any firm figures for costs. However in no case was the cost of compliance raised as a general concern. Where specific features of the draft Regulations did appear to threaten the viability of particular lines of business or particular financial products, suitable amendments were made.

### **Total compliance costs**

11. The difficulties discussed above apply even more strongly to any attempt to estimate the cost of compliance for the economy as a whole. It is necessary not only to estimate the number and sizes of the firms affected but also the degree to which they are already in compliance with the Regulations. Moreover, some of the measures needed to comply with the Regulations may coincide with steps taken to improve management or quality of service.
12. On the other side, there will be benefits to business from reducing their vulnerability to money laundering.
13. It has not been possible to produce more than very broad-brush estimates based on illustrative assumptions.
  - Substantial revision of computer programmes may well be needed by most medium and large institutions outside the banking and building societies area. This might affect some 500 firms, at a weighted average cost of around £40,000 each. Ongoing maintenance might be 10 per cent. of this total.
  - Identification procedures will require new manuals to be produced by all but the smallest firms, at a total cost of perhaps £3 million, and the procedures may increase ongoing staff workload by perhaps 500,000 man-hours.
  - Staff training might amount to some 500,000 man-hours annually, with additional total set-up costs of perhaps £5 million.

- Recurring record-keeping costs might be of the same order.

14. Allowing a margin for other costs, the total might be of the order of £30 million of initial costs and £20 million of recurring costs. This compares with total wage and salary costs alone for the banking, finance and insurance sector in 1992 of £17.2 billion.

### **Effects on international competitiveness**

15. The Regulations require new identification procedures to be followed in transactions involving parties from non-EC countries. Some financial institutions consider that this will lead to some loss of business from non-EC customers. Amendments have been made to the Regulations to ensure that the additional procedures for dealing with non-EC customers are proportionate to the risk of money laundering involved in doing business with customers from the countries concerned.

### **Extent of consultation**

16. Businesses were asked to give their views on the cost of the proposed Regulations in "Implementation of the EC Money Laundering Directive" HM Treasury consultation paper issued in May 1992 for comments by 31st July 1992. One thousand copies were issued to a wide range of regulatory authorities, recognised professional bodies and trade associations, and to a number of individual businesses.
17. Consultees were asked "to identify and quantify any additional direct or indirect costs (recurring and non-recurring)" that would be likely to arise as a result. Of the 60 respondents, fewer than 10 commented on costs, and only one respondent attempted to quantify them. This suggested that costs arising directly from the Money Laundering Directive were not a major cause for concern.
18. 450 copies of the draft Money Laundering Regulations were issued in November 1992, to those bodies most closely affected.
19. In June 1993 a further draft of the Regulations and a draft compliance cost assessment were sent for comment to a range of regulatory authorities, recognised professional bodies and trade associations, and were made available on request to other interested bodies.

### **Arrangements for monitoring and review**

20. It is not intended that actual costs will be actively monitored against estimated costs, not least because of the difficulties referred to above of quantifying costs across the different sectors affected. However the effectiveness of the Regulations will be kept under review, and the compliance burden will be taken fully into account in any revision of them.

## **TYPICAL COMPLIANCE COSTS**

### **LARGE BUILDING SOCIETY**

Annual running costs:	£55m
Non-recurring costs:	
computer systems	minimal
new manuals	£10,000
training	£50,000
other	minimal

<b>TOTAL</b>	<b>£60,000</b>
% of total annual running costs	0.11%

Recurring costs:

maintenance of computer systems	minimal
identification procedures	£16,000
training	minimal
record keeping	£7,000
other	minimal

<b>TOTAL</b>	<b>£23,000</b>
% of total annual running costs	0.04%

## LARGE UNIT TRUST AND PEP PLAN MANAGEMENT COMPANY

Annual running costs: £ 35m

Non-recurring costs:

computer systems	£200,000
new manuals	£10,000
training	£20,000
other	minimal

<b>TOTAL</b>	<b>£230,000</b>
% of total annual running costs	0.66%

Recurring costs:

maintenance of computer systems	£20,000
identification procedures, etc.	£50,000
training	£20,000
record keeping	£10,000
other	£50,000

<b>TOTAL</b>	<b>£150,000</b>
% of total annual running costs	0.43%

## LARGE LIFE ASSURANCE / PENSIONS COMPANY

Annual running costs: £140m

Non-recurring costs:

computer systems	£50,000
new manuals	£20,000
training	£100,000
other	minimal

<b>TOTAL</b>	<b>£170,000</b>
% of total annual running costs	0.12%

Recurring costs:

maintenance of computer systems	minimal
identification procedures	£10,000
training	£20,000
record keeping	minimal



other (audit)	£15,000
<b>TOTAL</b>	<b>£45,000</b>
% of total annual running costs	0.03%

#### **MEDIUM SIZED MOTOR FINANCE HOUSE**

Annual running costs: £600,000

Non-recurring costs:

computer systems	£10,000
new manuals	£2,000
training	£1,000
other	minimal

<b>TOTAL</b>	<b>£12,000</b>
% of total annual running costs	2%

Recurring costs:

maintenance of computer systems	£2,000
training	minimal
record keeping	£1,000
other	minimal
<b>TOTAL</b>	<b>£3,000</b>
% of total annual running costs	0.5%

**The substantive UK law on money laundering**

**1. Table of offences**

**2. Drug Trafficking Act 1994**

Section 49 "Concealing or transferring the proceeds of drug trafficking"

Section 50 "Assisting another to retain the benefit of drug trafficking"

Section 51 "Acquisition, possession or use of the proceeds of drug trafficking"

Section 52 "Failure to disclose knowledge or suspicion of money laundering"

Section 53 "Tipping off"

**3. Criminal Justice Act 1988 as amended by the Criminal Justice Act 1993**

Section 93A "Assisting another to retain the benefit of criminal conduct"

Section 93B "Acquisition, possession or use of proceeds of criminal conduct"

Section 93C (concealing and acquisition offences)

Section 93D "Tipping off"

Section 93H "Investigations into the proceeds of criminal conduct"

**4. Prevention of Terrorism (Temporary Provisions) Act 1989**

Section 11 "Assisting in retention or control of terrorist funds"

Section 12 "Disclosure of information about terrorist funds"

Section 13 "Penalties and forfeiture"

Section 17 "Investigation of terrorist activities"

Section 18A "Failure to disclose knowledge or suspicion of offences under sections 9 to 11"

## OFFENCES: MONEY LAUNDERING OFFENCES (ENGLAND AND WALES)

OFFENCE	(A) DRUG TRAFFICKING	(B) TERRORISM	(C) CRIMINAL CONDUCT	MAXIMUM PENALTY	DEFENCES	IMMUNITY FOR BREACH OF CONTRACT
Assisting/facilitating a money launderer to retain benefit of drug trafficking, terrorism or criminal conduct ((A), (B) or (C))	S.50 DTA	S.11 POTA	S.93A CJA	14 years/fine or both	<ul style="list-style-type: none"> <li>Lack of knowledge/suspicion (reasonable suspicion in (B))</li> <li>Disclose to police or employer</li> </ul>	Yes
Tipping off	S.53 DTA  N/A to legal advice	S.17 POTA	S.93D CJA  N/A to legal advice	5 years/fine or both	<ul style="list-style-type: none"> <li>Lack of knowledge/suspicion (reasonable suspicion in (B))</li> <li>(B) - lawful authority/reasonable excuse</li> <li>(B) - lack of intention to conceal information</li> </ul>	N/A
Concealing or transferring proceeds of (A) or (C)	S.49 DTA	No offence	S.93C CJA	14 years/fine or both	N/A	N/A
Acquisition, possession or use of proceeds of (A) or (C)	S.51 DTA	No offence	S.93B CJA	14 years fine/or both	<ul style="list-style-type: none"> <li>Disclose to police or employer</li> <li>Acquire property for "adequate consideration"</li> </ul>	Yes
Failure to disclose knowledge or suspicion of money laundering	S.52 DTA (only information gained in the course of his trade, profession, business or employment)  N/A to items subject to legal privilege	S.18A POTA (only information gained in the course of his trade, profession, business or employment)  N/A to items subject to legal privilege	No offence	5 years/fine or both	<ul style="list-style-type: none"> <li>"reasonable excuse"</li> <li>or disclose to police</li> <li>or disclose to employer</li> </ul>	Yes
Failure to maintain money laundering procedures and staff training	Regulation 5(2) MLR (procedures and training requirements apply where a person forms business relationships or carries out one-off transactions in the course of "relevant financial business")			2 years/fine or both	<ul style="list-style-type: none"> <li>"reasonable steps" and "due diligence" to avoid the offence (Regulation 5(4))</li> </ul>	N/A

### Abbreviations:

DTA Drug Trafficking Act 1994  
POTA Prevention of Terrorism (Temporary Provisions) Act 1989, as amended by the CJA 1993  
IN983430.089/1+

CJA Criminal Justice Act 1988, as amended by the CJA 1993  
MLR Money Laundering Regulations 1993 (SI 1993/1933)  
NJ13

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## **OFFENCES: MONEY LAUNDERING OFFENCES (ENGLAND AND WALES)**

### **Drug Trafficking Act 1994**

#### ***“Concealing or transferring proceeds of drug trafficking.”***

#### **Section 49**

- (1) A person is guilty of an offence if he –
  - (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of drug trafficking, or
  - (b) converts or transfers that property or removes it from the jurisdiction,for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in his case of a confiscation order.
- (2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he –
  - (a) conceals or disguises that property, or
  - (b) converts or transfers that property or removes it from the jurisdiction,for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.
- (3) In subsections (1)(a) and (2)(a) above the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

## **Drug Trafficking Act 1994**

***“Assisting another person to retain the benefit of drug trafficking.”***

### **Section 50**

- (1) Subject to subsection (3) below, a person is guilty of an offence if he enters into or is otherwise concerned in an arrangement whereby –
  - (a) the retention or control by or on behalf of another person (call him “A”) of A’s proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise), or
  - (b) A’s proceeds of drug trafficking –
    - (i) are used to secure that funds are placed at A’s disposal, or
    - (ii) are used for A’s benefit to acquire property by way of investment,and he knows or suspects that A is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking.
- (2) In this section, references to any person’s proceeds of drug trafficking include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of drug trafficking.
- (3) Where a person discloses to a constable a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking, or discloses to a constable any matter on which such a suspicion or belief is based –
  - (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
  - (b) if he does any act in contravention of subsection (1) above and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if –
    - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable; or
    - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.
- (4) In proceedings against a person for an offence under this section, it is a defence to prove –
  - (a) that he did not know or suspect that the arrangement related to any person’s proceeds of drug trafficking;
  - (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1)(b) above; or
  - (c) that –

- (i) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (3) above in relation to the arrangement, but
  - (ii) there is reasonable excuse for his failure to make any such disclosure in the manner mentioned in paragraph (b)(i) or (ii) of that subsection.
- (5) In the case of a person who was in employment at the time in question, subsections (3) and (4) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.

## **Drug Trafficking Act 1994**

### ***“Acquisition, possession or use of proceeds of drug trafficking.”***

#### **Section 51**

- (1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he acquires or uses that property or has possession of it.
- (2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.
- (3) For the purposes of subsection (2) above –
  - (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and
  - (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.
- (4) The provision for any person of services or goods which are of assistance to him in drug trafficking shall not be treated as consideration for the purposes of subsection (2) above.
- (5) Where a person discloses to a constable a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, or discloses to a constable any matter on which such a suspicion or belief is based –
  - (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
  - (b) if he does any act in relation to the property in contravention of subsection (1) above, he does not commit an offence under this section if –
    - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable; or
    - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

- (6) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.
- (7) In proceedings against a person for an offence under this section, it is a defence to prove that —
  - (a) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (5) above, but
  - (b) there is reasonable excuse for his failure to make any such disclosure in the manner mentioned in paragraph (b)(i) or (ii) of that subsection.
- (8) In the case of a person who was in employment at the time in question, subsections (5) and (7) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.
- (9) No constable or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of drug trafficking.

## **Drug Trafficking Act 1994**

### ***“Failure to disclose knowledge or suspicion of money laundering.”***

#### **Section 52**

- (1) A person is guilty of an offence if –
  - (a) he knows or suspects that another person is engaged in drug money laundering,
  - (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment, and
  - (c) he does not disclose the information or other matter to a constable as soon as is reasonably practicable after it comes to his attention.
- (2) Subsection (1) above does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.
- (3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.
- (4) Where a person discloses to a constable –
  - (a) his suspicion or belief that another person is engaged in drug money laundering, or
  - (b) any information or other matter on which that suspicion or belief is based,the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (5) Without prejudice to subsection (3) or (4) above, in the case of a person who was in employment at the time in question, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.
- (6) A disclosure to which subsection (5) above applies shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (7) In this section “drug money laundering” means doing any act –
  - (a) which constitutes an offence under section 49, 50 or 51 of this Act; or
  - (b) in the case of an act done otherwise than in England and Wales, which would constitute such an offence if done in England and Wales;and for the purposes of this subsection, having possession of any property shall be taken to be doing an act in relation to it.
- (8) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him –



- (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
  - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
  - (c) by any person –
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purpose of those proceedings.
- (9) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purposes.

## **Drug Trafficking Act 1994**

### ***“Tipping-off”***

#### **Section 53**

- (1) A person is guilty of an offence if –
  - (a) he knows or suspects that a constable is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into drug money laundering, and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.
- (2) A person is guilty of an offence if –
  - (a) he knows or suspects that a disclosure has been made to a constable under section 50, 51 or 52 of this Act (“the disclosure”), and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (3) A person is guilty of an offence if –
  - (a) he knows or suspects that a disclosure of a kind mentioned in section 50(5), 51(8) or 52(5) of this Act (“the disclosure”) has been made, and
  - (b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (4) Nothing in subsections (1) to (3) above makes it an offence for a professional legal adviser to disclose any information or other matter –
  - (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
  - (b) to any person –
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purposes of those proceedings.
- (5) Subsection (4) above does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (6) In proceedings against a person for an offence under subsection (1), (2) or (3) above, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.
- (7) No constable or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of drug trafficking.

(8) In this section “drug money laundering” has the same meaning as in section 52 of this Act.

## **Criminal Justice Act 1988**

### ***“Assisting another to retain the benefit of criminal conduct.”***

#### **Section 93A**

- (1) Subject to subsection (3) below, if a person enters into or is otherwise concerned in an arrangement whereby –
  - (a) the retention or control by or on behalf of another (“A”) of A’s proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
  - (b) A’s proceeds of criminal conduct –
    - (i) are used to secure that funds are placed at A’s disposal; or
    - (ii) are used for A’s benefit to acquire property by way of investment,knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct, he is guilty of an offence.
- (2) In this section, references to any person’s proceeds of criminal conduct include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of criminal conduct.
- (3) Where a person discloses to a constable a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or discloses to a constable any matter on which such a suspicion or belief is based –
  - (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
  - (b) if he does any act in contravention of subsection (1) above and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if –
    - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable; or
    - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.
- (4) In proceedings against a person for an offence under this section, it is a defence to prove –
  - (a) that he did not know or suspect that the arrangement related to any person’s proceeds of criminal conduct; or
  - (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used, as mentioned in subsection (1) above; or

(c) that –

- (i) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (3) above in relation to the arrangement; but
- (ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3)(b) above.

(5) In the case of a person who was in employment at the relevant time, subsections (3) and (4) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.

(6) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both; or
- (b) on conviction on indictment, to imprisonment for a term no exceeding fourteen years or a fine or to both.

(7) In this Part of this Act “criminal conduct” means conduct which constitutes an offence to which this Part of this Act applies or would constitute such an offence if it had occurred in England and Wales or (as the case may be) Scotland.

## **Criminal Justice Act 1988**

### ***“Acquisition, possession or use of proceeds of criminal conduct”***

#### **Section 93B**

- (1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.
- (2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.
- (3) For the purposes of subsection (2) above –
  - (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and
  - (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.
- (4) The provision for any person of services or goods which are of assistance to him in criminal conduct shall not be treated as consideration for the purposes of subsection (2) above.
- (5) Where a person discloses to a constable a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct or discloses to a constable any matter on which such a suspicion or belief is based –
  - (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
  - (b) if he does any act in relation to that property in contravention of subsection (1) above, he does not commit an offence under this section if –
    - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable; or
    - (ii) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it.
- (6) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.
- (7) In proceedings against a person for an offence under this section, it is a defence to prove that –
  - (a) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (5) above; but
  - (b) there is reasonable excuse for his failure to make the disclosure in accordance with paragraph (b) of that subsection.

- (8) In the case of a person who was in employment at the relevant time, subsections (5) and (7) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.
- (9) A person guilty of an offence under this section is liable –
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or to both.
- (10) No constable or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to criminal conduct or the proceeds of such conduct.

## **Criminal Justice Act 1988**

### ***“Concealing or transferring proceeds of criminal conduct”***

#### **Section 93C**

- (1) A person is guilty of an offence if he –
  - (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct; or
  - (b) converts or transfers that property or removes it from the jurisdiction,for the purpose of avoiding prosecution for an offence to which this Part of this Act applies or the making or enforcement in his case of a confiscation order.
- (2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he –
  - (a) conceals or disguises that property; or
  - (b) converts or transfers that property or removes it from the jurisdiction,for the purpose of assisting any person to avoid prosecution for an offence to which this Part of this Act applies or the making or enforcement in his case of a confiscation order.
- (3) In subsections (1) and (2) above, the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.
- (4) A person guilty of an offence under this section is liable –
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or to both.



## **Criminal Justice Act 1988**

### ***“Tipping-off”***

#### **Section 93D**

- (1) A person is guilty of an offence if –
  - (a) he knows or suspects that a constable is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering; and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation.
- (2) A person is guilty of an offence if –
  - (a) he knows or suspects that a disclosure (“the disclosure”) has been made to a constable under section 93A or 93B above; and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (3) A person is guilty of an offence if –
  - (a) he knows or suspects that a disclosure of a kind mentioned in section 93A(5) or 93B(8) above (“the disclosure”) has been made; and
  - (b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (4) Nothing in subsections (1) to (3) above makes it an offence for a professional legal adviser to disclose any information or other matter –
  - (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
  - (b) to any person –
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purpose of those proceedings.
- (5) Subsection (4) above does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (6) In proceedings against a person for an offence under subsection (1), (2) or (3) above, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.
- (7) In this section “money laundering” means doing any act which constitutes an offence under section 93A, 93B or 93C above or, in the case of an act done otherwise than in England and Wales or Scotland, would constitute such an offence if done in England and Wales or (as the case may be) Scotland.

- (8) For the purposes of subsection (7) above, having possession of any property shall be taken to be doing an act in relation to it.
- (9) A person guilty of an offence under this section shall be liable –
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or to both.
- (10) No constable or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to an offence to which this Part of this Act applies.

## **Criminal Justice Act 1988**

*“Order to make material available”*

### **Section 93H**

- (1) A constable may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to a Circuit judge for an order under subsection (2) below in relation to particular material or material of a particular description.
- (2) If, on such an application, the judge is satisfied that the conditions in subsection (4) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall-

- (a) produce it to a constable for him to take away, or
- (b) give a constable access to it,

within such period as the order may specify.

This subsection has effect subject to section 93J(11) below.

- (3) The period to be specified in an order under subsection (2) above shall be seven days unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (4) The conditions referred to in subsection (2) above are-
  - (a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;
  - (b) that there are reasonable grounds for suspecting that the material to which the application relates-
    - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made; and
    - (ii) does not consist of or include items subject to legal privilege or excluded material;and
  - (c) that there are reasonable grounds for believing that it is in the public interest, having regard-
    - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
    - (ii) to the circumstances under which the person in possession of the material holds itthat the material should be produced or that access to it should be given.

- (5) Where the judge makes an order under subsection (2)(b) above in relation to material on any premises he may, on the application of a constable, order any person who appears to him to

be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

- (6) An application under subsection (1) or (5) above may be made ex parte to a judge in chambers.
- (7) Provision may be made by Crown Court Rules as to-
  - (a) the discharge and variation of orders under this section; and
  - (b) proceedings relating to such orders.
- (8) An order of a Circuit judge under this section shall have effect as if it were an order of the Crown Court.
- (9) Where the material to which an application under subsection (1) above relates consists of information contained in a computer-
  - (a) an order under subsection (2)(a) above shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
  - (b) an order under subsection (2)(b) above shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (10) An order under subsection (2) above-
  - (a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material;
  - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
  - (c) may be made in relation to material in the possession of an authorised government department;

and in this subsection “authorised government department” means a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947.
- (11) For the purposes of sections 21 and 22 of the Police and Criminal Evidence Act 1984 (access to, and copying and retention of, seized material) material produced in pursuance of an order under subsection (2)(a) above shall be treated as if it were material seized by a constable.
- (12) In this section-
  - (a) “excluded material”, “items subject to legal privilege” and “premises” have the same meanings as in the Police and Criminal Evidence Act 1984; and
  - (b) references to a person benefiting from any criminal conduct, in relation to conduct which is not an offence to which this Part of this Act applies but would be if it had occurred in England and Wales, shall be construed in accordance with section 71(4) and (5) above as if it had so occurred.

## **Prevention of Terrorism (Temporary Provisions) Act 1989**

### ***“Assisting in retention or control of terrorist funds”***

#### **Section 11**

- (1) A person is guilty of an offence if he enters into or is otherwise concerned in an arrangement whereby the retention or control by or on behalf of another person of terrorist funds is facilitated, whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise.
- (2) In proceedings against a person for an offence under this section it is a defence to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist funds.
- (3) In this section and section 12 below “terrorist funds” means-
  - (a) funds which may be applied or used for the commission of, or in furtherance of or in connection with, acts of terrorism to which section 9 above applies;
  - (b) the proceeds of the commission of such acts of terrorism or of activities engaged in furtherance of or in connection with such acts; and
  - (c) the resources of a proscribed organisation.
- (4) Paragraph (b) of subsection (3) includes any property which in whole or in part directly or indirectly represents such proceeds as are mentioned in that paragraph; and paragraph (c) of that subsection includes any money or other property which is or is to be applied or made available for the benefit of a proscribed organisation.

## **Prevention of Terrorism (Temporary Provisions) Act 1989**

### ***“Disclosure of information about terrorist funds”***

#### **Section 12**

- (1) A person may notwithstanding any restriction on the disclosure of information imposed by statute or otherwise disclose to a constable a suspicion or belief that any money or other property is or is derived from terrorist funds or any matter on which such a suspicion or belief is based.
- (2) A person who enters into or is otherwise concerned in any such transaction or arrangement as is mentioned in section 9, 10 or 11 above does not commit an offence under that section if he is acting with the express consent of a constable or if-
  - (a) he discloses to a constable his suspicion or belief that the money or other property concerned is or is derived from terrorist funds or any matter on which such a suspicion or belief is based; and
  - (b) the disclosure is made after he enters into or otherwise becomes concerned in the transaction or arrangement in question but is made on his own initiative and as soon as it is reasonable for him to make it, but paragraphs (a) and (b) above do not apply in a case where, having disclosed any such suspicion, belief or matter to a constable and having been forbidden by a constable to enter into or otherwise be concerned in the transaction or arrangement in question, he nevertheless does so.
- (2A) For the purposes of subsection (2) above a person who uses or has possession of money or other property shall be taken to be concerned in a transaction or arrangement.
- (3) In proceedings against a person for an offence under section 9(1)(b)[or (c)] or (2), 10(1)(b) or (c) or 11 above it is a defence to prove-
  - (a) that he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in paragraph (a) of subsection (2) above; and
  - (b) that there is a reasonable excuse for his failure to make the disclosure as mentioned in paragraph (b) of that subsection.
- (4) In the case of a person who was in employment at the relevant time, subsections (1) to (3) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.
- (5) No constable or other person shall be guilty of an offence under section 9(1)(b) or (c) or (2) or 10(1)(b) or (c) above in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to terrorism or the proceeds or resources of terrorism.
- (6) For the purposes of subsection (5) above, having possession of any property shall be taken to be doing an act in relation to it.

## **Prevention of Terrorism (Temporary Provisions) Act 1989**

### ***“Penalties and forfeiture”***

#### **Section 13**

- (1) A person guilty of an offence under section 9, 10 or 11 above is liable-
  - (a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (2) Subject to the provisions of this section, the court by or before which a person is convicted of an offence under section 9(1) or (2)(a) above may order the forfeiture of any money or other property-
  - (a) which, at the time of the offence, he had in his possession or under his control; and
  - (b) which, at that time-
    - (i) in the case of an offence under subsection (1) of section 9, he intended should be applied or used, or had reasonable cause to suspect might be applied or used, as mentioned in that subsection;
    - (ii) in the case of an offence under subsection (2)(a) of that section, he knew or had reasonable cause to suspect would or might be applied or used as mentioned in subsection (1) of that section.
- (3) Subject to the provisions of this section, the court by or before which a person is convicted of an offence under section 9(2)(b), 10(1)(c) or 11 above may order the forfeiture of the money or other property to which the arrangement in question related and which, in the case of an offence under section 9(2)(b), he knew or had reasonable cause to suspect would or might be applied or used as mentioned in section 9(1) above..
- (4) Subject to the provisions of this section, the court by or before which a person is convicted of an offence under section 10(1)(a) or (b) above may order the forfeiture of any money or other property which, at the time of the offence, he had in his possession or under his control for the use or benefit of a proscribed organisation.
- (5) The court shall not under this section make an order forfeiting any money or other property unless the court considers that the money or property may, unless forfeited, be applied or used as mentioned in section 9(1) above but the court may, in the absence of evidence to the contrary, assume that any money or property may be applied or used as there mentioned.
- (6) Where a person other than the convicted person claims to be the owner of or otherwise interested in anything which can be forfeited by an order under this section, the court shall, before making such an order in respect of it, give him an opportunity to be heard.
- (7) A court in Scotland shall not make an order under subsection (2), (3) or (4) above except on the application of the prosecutor when he moves for sentence; and for the purposes of any

appeal or review an order under any of those subsections made by a court in Scotland is a sentence.

- (8) Schedule 4 to this Act shall have effect in relation to orders under this section.



## **Prevention of Terrorism (Temporary Provisions) Act 1989**

### ***“ Investigation of terrorist activities”***

#### **Section 17**

- (1) Schedule 7 to this Act shall have effect for conferring powers to obtain information for the purposes of terrorist investigations, that is to say-
  - (a) investigations into-
    - (i) the commission, preparation or instigation of acts of terrorism to which section 14 above applies; or
    - (ii) any other act which appears to have been done in furtherance of or in connection with such acts of terrorism, including any act which appears to constitute an offence under section 2, 9, 10, 11, 18 or 18A of this Act or section 29 or 30 of the Northern Ireland (Emergency Provisions) Act 1996; or
    - (iii) without prejudice to sub-paragraph (ii) above, the resources of a proscribed organisation within the meaning of this Act or a proscribed organisation for the purposes of section 30 of the said Act of 1996; and
  - (b) investigations into whether there are grounds justifying the making of an order under section 1(2)(a) above or section 30(3) of the Act of 1996.
- (2) A person is guilty of an offence if, knowing or having reasonable cause to suspect that a constable is acting, or is proposing to act, in connection with a terrorist investigation which is being, or is about to be, conducted, he-
  - (a) discloses to any other person information or any other matter which is likely to prejudice the investigation or proposed investigation, or
  - (b) falsifies, conceals or destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, material which is or is likely to be relevant to the investigation, or proposed investigation.
- (2A) A person is guilty of an offence if, knowing or having reasonable cause to suspect that a disclosure (“the disclosure”) has been made to a constable under section 12, 18 or 18A of this Act, he-
  - (a) discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure; or
  - (b) falsifies, conceals or destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, material which is or is likely to be relevant to any such investigation.
- (2B) A person is guilty of an offence if, knowing or having reasonable cause to suspect that a disclosure (“the disclosure”) of a kind mentioned in section 12(4) or 18A(5) of this Act has been made, he-
  - (a) discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure; or

- (b) falsifies, conceals or destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, material which is or is likely to be relevant to any such investigation.
- (2C) Nothing in subsections (2) to (2B) above makes it an offence for a professional legal adviser to disclose any information or other matter-
  - (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
  - (b) to any person-
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purpose of those proceedings.
- (2D) Subsection (2C) above does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (2E) No constable or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to terrorism or the proceeds or resources of terrorism.
- (3) In proceedings against a person for an offence under subsection (2)(a) above it is a defence to prove-
  - (a) that he did not know and had no reasonable cause to suspect that the disclosure was likely to prejudice the investigation or proposed investigation; or
  - (b) that he had lawful authority or reasonable excuse for making the disclosure.
- (3A) In proceedings against a person for an offence under subsection (2A)(a) or (2B)(a) above it is a defence to prove-
  - (a) that he did not know and had no reasonable cause to suspect that his disclosure was likely to prejudice the investigation in question; or
  - (b) that he had lawful authority or reasonable excuse for making his disclosure.
- (4) In proceedings against a person for an offence under subsection (2)(b) above it is a defence to prove that he had no intention of concealing any information contained in the material in question from any person conducting, or likely to be conducting, the investigation or proposed investigation.
- (4A) In proceedings against a person for an offence under subsection (2A)(b) or (2B)(b) above, it is a defence to prove that he had no intention of concealing any information contained in the material in question from any person who might carry out the investigation in question.
- (5) A person guilty of an offence under subsection (2), (2A) or (2B) above is liable-
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both;

- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (6) For the purposes of subsection (1) above, as it applies in relation to any offence under section 18 or 18A below, "act" includes omission.

## **Prevention of Terrorism (Temporary Provisions) Act 1989**

### ***“Failure to disclose knowledge or suspicion of offences under sections 9 to 11”***

#### **Section 18A**

- (1) A person is guilty of an offence if-
  - (a) he knows, or suspects, that another person is providing financial assistance for terrorism;
  - (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
  - (c) he does not disclose the information or other matter to a constable as soon as is reasonably practicable after it comes to his attention.
- (2) Subsection (1) above does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.
- (3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.
- (4) Where a person discloses to a constable-
  - (a) his suspicion or belief that another person is providing financial assistance for terrorism; or
  - (b) any information or other matter on which that suspicion or belief is based;the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (5) Without prejudice to subsection (3) or (4) above, in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.
- (6) A disclosure to which subsection (5) above applies shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (7) In this section “providing financial assistance for terrorism” means doing any act which constitutes an offence under section 9, 10 or 11 above or, in the case of an act done otherwise than in the United Kingdom, which would constitute such an offence if done in the United Kingdom.
- (8) For the purposes of subsection (7) above, having possession of any property shall be taken to be doing an act in relation to it.
- (9) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him-

- (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
  - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
  - (c) by any person-
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purpose of those proceedings.
- (10) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.
- (11) A person guilty of an offence under this section shall be liable-
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or to both.

**Financial Action Task Force Member Countries**

**Australia**

**Austria +**

**Belgium\***

**Canada**

**Denmark\***

**Finland**

**France\***

**Germany\***

**Greece\***

**Hong Kong**

**Iceland**

**Ireland\***

**Italy\***

**Japan**

**Luxembourg\***

**Netherlands\***

**New Zealand**

**Norway**

**Singapore**

**Spain\***

**Sweden**

**Switzerland**

**Turkey**

**United Kingdom\***

**United States**

**\* Denotes a country is a member of the EC as well as of the FATF**

**+ See Annex G page 71 and the Joint Money Laundering Steering Group notes.**

**MONEY LAUNDERING - EXAMPLE MANUAL FOR INVESTMENT BUSINESS PROCEDURES**

**STAFF**

**OVERALL RESPONSIBILITY FOR COMPLIANCE:**

**Internal Reporting Officer:**

**Relevant Staff Posts:  
Procedure**

**Name of Current Holder**

**Received copy of**

***Signature***

**Trust Department:**

- A.
- B.
- C.

**Probate Department:**

- A.
- B.
- C.

**Conveyancing Department:**

- A.
- B.
- C.

**Company Law Department:**

- A.
- B.
- C.

**Investment Business Adviser:**

- A.
- B.
- C.

**Accounts Department:**

- A.
- B.

## TRAINING

NAME DUE	DATE OF INITIAL TRAINING	COURSE TITLE/ MEDIUM	NEXT	UPDATE
-------------	-----------------------------	-------------------------	------	--------

## LIST OF TRAINING MATERIAL AVAILABLE IN THE OFFICE

1.

2.

3.

4.

5.



**MONEY LAUNDERING SUSPICIOUS CLIENT/MATTER REPORT FORM**

**FOR INTERNAL USE ONLY**

**1. NAME OF CLIENT/S:**

.....  
.....

Aliases/Trading Names

.....  
.....

**2. ADDRESS** (including postcode,  
telephone, fax and contact name):

.....  
.....  
.....

**3. DATE OF BIRTH:**.....

**4. SUMMARY AND DATE OF INSTRUCTIONS:**

.....

**5. IF NOT ACTING AS PRINCIPAL**

a) Name of Principal:

.....

b) Address of Principal:  
(including postcode, fax and contact name)

.....  
.....  
.....  
.....

6. **EVIDENCE OF IDENTITY OF  
CLIENT**

Attached YES/NO:.....

7. **VALUE OF INVESTMENT  
BUSINESS:**

8. **NAME AND ADDRESS OF  
INTRODUCER:**

.....  
.....  
.....

(letter of introduction attached YES/NO.....

9. **SOURCE OF FUNDS**

Cash/Bank/Other Securities:

.....

Amount, type and destination:

.....

**REASON FOR SUSPICION:**

.....  
.....  
.....  
.....  
.....

**PROFESSIONAL PRIVILEGE**

Applicable YES/NO:.....

**REPORT DATE:**.....

**SIGNED:**.....

**THIS FORM MUST NOT BE PLACED ON CLIENT’S FILE**

To be completed by Internal Reporting Officer

Report to NCIS:

- YES/NO
- If NO give reasons:

.....

.....

.....

.....

DATE BUSINESS COMPLETED:

.....

RECORD DESTRUCTION DATE:

.....

**This record must not be destroyed at the date of destruction if a report has been made to the NCIS without reference first to the NCIS.**

## CLIENT IDENTIFICATION FORM

### IMPORTANT

Every person with responsibility for a client's investment business **must** complete the form below:

1. **NAME OF CLIENT/S:**

.....  
.....

Aliases/Trading Names

.....

2. **ADDRESS:** (including postcode telephone and contact name):

.....  
.....  
.....

Type of Business:

.....

3. **DATE OF BIRTH:**.....

1. **SUMMARY AND DATE OF INSTRUCTIONS:**

.....  
.....

5. **IF NOT ACTING AS PRINCIPAL**

(a) Name of Principal:

.....

(b) Address of Principal:  
(including postcode, fax and contact name):

.....

.....

.....

(c) Evidence of identity of Principal:

.....

6. **EVIDENCE OF IDENTITY OF CLIENT**

Attached YES/NO:.....

(if not attached, give reason):

.....  
.....  
.....

7. **NAME AND ADDRESS OF INTRODUCER:**

.....  
.....  
.....  
.....

(letter of introduction attached YES/NO):.....

8. **WRITTEN CONFIRMATION BY INTRODUCER:**

.....

9. **ESTABLISHED CLIENT**

(at and continuously since April 1994):

.....

10. **COMPANY QUOTED ON ANY REGULATED MARKET OR EXCHANGE:**

.....

11. **KNOWN SUBSIDIARY OF ABOVE COMPANY:**

.....

12. **DIRECTORS/PARTNERS KNOWN  
TO FIRM**  
(at and continuously since April 1994)

.....

.....

13. **COPY LATEST COMPANY REPORT/ACCOUNTS**

.....

14. **COPY OF CERTIFICATE OF INCORPORATION**

.....

15. **IDENTITY OF DIRECTOR/PARTNER ESTABLISHED BY:**

.....

16. **OTHER:**.....

17. **EVIDENCE OF IDENTITY**

Attached - YES/NO: .....

(If not attached, give reason):

.....

.....

18. Evidence of identity not obtained. Retainer terminated .....19.....

REFERENCE:

.....

DATED:

.....

SIGNED:

## RECORD OF TRANSACTION

**IMPORTANT**

**Compiled by:**

**Date:**

This record will comply with rule 16(2)(a) of the Solicitors' Investment Business Rules 1995 as regards records of transactions.

**1. NAME OF CLIENT/S**

.....

.....

Aliases/Trading Names

.....

**2. ADDRESS** (including postcode, telephone, fax and contact name):

.....

.....

.....

**3. NAME AND ADDRESS OF PRINCIPAL/THIRD PARTY:**  
(including telephone, fax and contact name):

.....

.....

.....

**4. NAME AND ADDRESS OF INTRODUCER:**

.....

.....

.....

(letter of introduction attached YES/NO).....

**2. THE SECURITY DEALT IN**  
(including price and size):

.....

**3. PURCHASE OR SALE:**

.....

**4. FORM OF INSTRUCTIONS OR AUTHORITY:**

.....

**8. DATE AND TIME OF  
RECEIPT OF INSTRUCTIONS:**

.....

**9. ORIGINS OF THE FUNDS PAID BY THE CLIENT TO THE FIRM:**  
(NB: where appropriate details of cheques should be noted).

.....

**10. DESTINATION OF PAYMENT  
MADE BY FIRM TO CLIENT:**

.....

**11. NATURE OF PAYMENT:**

.....

**12. EARLIEST RECORD DESTRUCTION DATE**

.....

**This record must not be destroyed at the date of destruction if a report has been made to the NCIS, without further reference to the NCIS.**



**Extracts from the JMLSG guidance notes on verification for UK and non-UK companies**

**UK companies ( other than those falling within sections 11.7 -11.9 above)**

If the client is an unquoted company, an unincorporated business or a partnership and none of the directors / partners is already known, the firm should identify one or more of the principal / partners and / shareholders in line with the requirements for private clients. The following documents should normally be obtained:

For established businesses;

- a copy of the latest report and accounts (audited where applicable);
- a copy of the certificate of incorporation / certificate of trade or equivalent.

The firm may also;

- make a credit reference agency search or take a banker's reference;
- for smaller companies or partnerships, verify the identity of one or more of the directors/partners in line with the requirements of private clients.

**Non – UK Companies**

No evidence of identity in addition to normal commercial checks and due diligence will normally be required when the client is;

- a company quoted on a Recognised, Designated or Approved Investment Exchange in a country with equivalent legislation (see Annex C); or
- is known to be a subsidiary of such a company;
- a regulated member of a UK Recognised Investment Exchange;
- a private company whose directors are already known to the firm.

Where the corporate client does not fall within one of the above categories, comparable documents to those required for UK private companies should be obtained. In addition, the firm should seek to identify at least one of the principal directors and influential shareholders of the company or the sole director where applicable, in accordance with the requirements for non-UK private clients. These steps should extend as far as practicable to identifying any individuals who have significant influence and financial control of the company. Evidence that the individual representing the company has the necessary authority to do so should be sought and retained.

Particular care should be taken to verify the legal existence of the company and to ensure that any person purporting to act on behalf of the company is so authorised. The principal requirement is to look behind the corporate entity to identify those who have ultimate control over the business and the company's assets with particular attention paid to shareholders or others eg. nominees who inject a significant proportion of the capital or financial support. Enquiries should be made to confirm that the company exists for a legitimate trading or economic purpose and that it is not merely a "brass plate company" where the controlling principals cannot be identified.

Before a business relationship is established, measures should be taken by way of company search and / or other commercial enquiries to check that the company has not been, or is not in the process of being, dissolved, struck off, wound up or terminated.

## ANNEX F



NATIONAL CRIMINAL INTELLIGENCE SERVICE

J M Abbott C.B.E, Q.P.M, B.A.  
(Hons)  
Director General  
**Disclosure Report**

Economic Crime Branch - The UK FIU  
PO Box 8000  
LONDON  
SE11 5EN

Tel : 020 7238 8607  
Fax : 020 7238 8286

Your Ref:		Sheet No:	1 of 1
Disclosure Type:		Disclosure Date:	
New or Update:	<b>New</b>	Existing Disclosure ID:	
Constructive Trust:	<input type="checkbox"/>	Further Information:	<input type="checkbox"/>
Source ID:		Source Outlet ID:	

**Main Subject (Person or Company)**

Surname:		Forenames(s):		Title:	
Date of Birth:		Gender:			
Occupation:		Employer:			

or

Company Name:		Company No.	
Type of Business:		VAT No.	
Country of Reg:			

Address (Number, Street, City/Town, County, Country)	Post Code	Type	Current

ID Information	Unique Information ID	Extra Information /Description

General Information regarding this Main subject:

--

## Transactions

<b>Disclosed Account Details:</b>				
FI ID:		Sort Code:		
Opened:		Closed:		Turn' Db:
Acct Name:		Acct No:		
Acct Bal:		Bal Date:		Turn' Pd:
<b>Individual Transactions with Counterparty Account Details:</b>				
1. Date:		Amount:	Currency:	Cr/Db:
Type:		Notes:		
FI ID:		Sort Code:		
Acc Name:		Acct No:		
2. Date:		Amount:	Currency:	Cr/Db:
Type:		Notes:		
FI ID:		Sort Code:		
Acc Name:		Acct No:		
3. Date:		Amount:	Currency:	Cr/Db:
Type:		Notes:		
FI ID:		Sort Code:		
Acc Name:		Acct No:		
4. Date:		Amount:	Currency:	Cr/Db:
Type:		Notes:		
FI ID:		Sort Code:		
Acc Name:		Acct No:		
5. Date:		Amount:	Currency:	Cr/Db:
Type:		Notes:		
FI ID:		Sort Code:		
Acc Name:		Acct No:		
6. Date:		Amount:	Currency:	Cr/Db:
Type:		Notes:		
FI ID:		Sort Code:		
Acc Name:		Acct No:		
7. Date:		Amount:	Currency:	Cr/Db:
Type:		Notes:		
FI ID:		Sort Code:		
Acc Name:		Acct No:		
8. Date:		Amount:	Currency:	Cr/Db:
Type:		Notes:		
FI ID:		Sort Code:		
Acc Name:		Acct No:		

**Associated Subject 1 (Person or Company)**

Surname:		Forenames(s):		Title:	
Date of Birth:		Gender:			
Occupation:		Employer:			
Reason For Association:					

**or**

Company Name:		Company No.	
Type of Business:		VAT No.	
Country of Reg:			
Reason For Association:			

**or**

<b>Subject Already Exists As Main Subject of a Previous Disclosure</b>			
Existing Disclosure ID:		Your Ref:	
Reason For Association:			

Address (Number, Street, City/Town, County, Country)	Post Code	Type	Current

Information	Unique Information ID	Extra Information /Description

General Information regarding this Associated subject:	

**Associated Subject 2 (Person or Company)**

Surname:		Forenames(s):		Title:	
Date of Birth:		Gender:			
Occupation:		Employer:			
Reason For Association:					

**or**

Company Name:		Company No.	
Type of Business:		VAT No.	
Country of Reg:			
Reason For Association:			

**or****Subject Already Exists As Main Subject of a Previous Disclosure**

Existing Disclosure ID:		Your Ref:	
Reason For Association:			

Address (Number, Street, City/Town, County, Country)	Post Code	Type	Current

Information	Unique Information ID	Extra Information /Description

General Information regarding this Associated subject:

--

**Reason for Suspicion**

**Guidance Notes on the completion  
of the NCIS Economic Crime Unit (ECU) Disclosure Form**



## NCIS Economic Crime Unit

The guidance notes explain what information is required in the disclosure form template and are to be read in conjunction with the form itself (copy attached).

The form should be completed on the computer-generated template, which is available from the NCIS website, [www.ncis.gov.uk/ec.html](http://www.ncis.gov.uk/ec.html), or the ECU, but if this is not possible it should be typed onto a paper copy. A number of fields within the computer-generated template can be completed by selecting options from drop down menus.

It is important that the relevant information is completed within the appropriate fields and not merely placed within the 'Reasons for Suspicion' field.

There are a number of fields that must be completed in order for a report to be accepted by NCIS. These fields are 'Your Ref (even if none), Disclosure Type, New or Update, Source ID, Source Outlet ID, Today's Date, (Main Subject) Surname or Company Name and Reasons for Disclosure'. Following this, according to the additional information you have available, a number of fields within each section must be completed if you are filling in that section. All such mandatory fields are shown below in ***bold italics***.

For a more detailed explanation of the template itself, please contact the ECU at the NCIS (contact details at end of notes).

### **Disclosure Report.**

<b><i>Your Ref:</i></b>	The reference number or alphanumeric identifier that you allocate to the disclosure within your own filing system.
Sheet No:	The number of pages used to complete the disclosure.
<b><i>Disclosure Type:</i></b>	This field should contain the type of offence under which you disclose (ie Crime, Drugs or Terrorism).
Disclosure Date:	The date on which the original disclosure report is made within your institution.
<b><i>New or Update:</i></b>	New is any new suspicious transaction or any further transaction on a previously reported account/transaction. An update is any further information that is not a transaction, on a previously reported account/transaction, eg a new address of a subject.

Existing Disclosure ID: If you have entered 'Update' in the previous field, enter here the reference number with which NCIS acknowledged the receipt of your previous disclosure, relating to the subject in question.

Constructive Trust: Fill this check box if the disclosure relates to an issue of Constructive Trust.

Further Information: Fill this check box to indicate that you retain further information relating to the disclosure that may be of interest to a Financial Investigator. For example, if your disclosure relates to a mortgage application, it may not always be necessary to provide the full documentation. In this case, indicate its existence here and provide a concise description in the 'Reasons for Suspicion' field.

**Source ID:** The name of your institution.

**Source Outlet ID:** The name (or sort code) of the branch office from which the disclosure originates.

**Today's Date:** Date report submitted to NCIS ECU. (Automatic date field).

**Main Subject (Person or Company).**

This information describes the individual (or company) on whom you wish to disclose.

**Surname:** The subject's family name.

Forenames: The subject's forenames.

Title: Title of subject (Mr, Mrs, Dr etc).

Date of Birth: Date of Birth of subject.

Gender: Gender of subject.

Occupation: Occupation of subject.

Employer: Subjects employer.

**Or:**

<b><i>Company Name:</i></b>	Company name of subject.
Company No:	Company registration number of subject.
Type of Business:	Type of business of subject.
VAT No:	VAT number of subject.
Country of Registration:	Country of registration of subject.

**Address.**

Number, Street, City/Town, County, Country.	Full address of subject.
<b><i>Post Code:</i></b>	Post Code of address of subject.
<b><i>Type:</i></b>	Type of address of subject (ie home, accommodation, trading etc).
Current:	Is the address of the subject current, Yes or No.

**ID Information.**

<b><i>ID Information:</i></b>	Describes the type of Identification offered or taken (eg driving licence).
<b><i>Unique Information ID:</i></b>	Give details of the Identification taken (eg driving licence number).
Extra Information / Description:	Give any further information relating to the Identification taken, which may be relevant or of use (eg if passport, the country of issue).
Other Information:	Give any further details that help to identify the subject.

**Disclosed Account Details.**

This information describes the account with which the subject or suspicious transaction is connected.

FI ID:	The name of the financial institution that holds the subject's account.
--------	---

Sort Code:	The sort code of the branch office that holds the subject's account.
Opened:	Date account opened.
Closed:	Date account closed (if applicable).
Turn' Cd:	Turnover Credit.
Turn' Db:	Turnover Debit.
Acct. Name:	Account Name.
Acct No:	Account Number.
Acct Bal:	Account Balance.
Bal Date:	Date of the Balance.
Turn Pd:	Turnover period.

#### **Individual Transactions with Counterparty Account Details.**

This section contains details of the transaction, or series of transactions that have aroused your suspicion, and details of the counterparties involved.

<b><i>Date:</i></b>	The date of the transaction.
<b><i>Amount:</i></b>	The amount of the transaction.
<b><i>Currency:</i></b>	The currency concerned in the transaction (eg GBP, USD, DEM etc).
<b><i>Cr/Db:</i></b>	This field stipulates whether the transaction constitutes a credit or debit in relation to the account identified above.
<b><i>Type:</i></b>	The type of transaction conducted (eg cash, cheque, electronic transfer, mortgage etc).
Notes:	This field is available for further information relating to the transaction identified above.
FI ID:	The name of the institution that holds the counterparty account, if applicable.

Sort Code:	The sort code of the branch office that holds the counterparty's account.
Acct. Name:	The name of the counterparty.
Acct. No:	The counterparty's account number.

**Associated Subject (Person & Company).**

This information describes the person(s) or companies with which the subject or suspicious transaction is connected. It is a person or company that is linked to the main person/company in some direct way and is involved in the monetary flow of the suspicious transaction. Please do not include the financial institution responsible for that account unless it is involved in your suspicions.

<b><i>Surname:</i></b>	The associated subject's family name.
Forenames:	The associated subject's forenames.
Title:	Title of associated subject (Mr, Mrs, Dr etc).
Date of Birth:	Date of Birth of associated subject.
Gender:	Gender of associated subject.
Occupation:	Occupation of associated subject.
Employer:	Associated subjects employer.
Reason for Association:	Give details of the connection between the Main Subject and associate subject.

**Or:**

<b><i>Company Name:</i></b>	The name of the associate company.
Company No:	Company number of associated subject.
Type of Business:	Type of business of associated subject.
VAT No:	VAT number of associated subject.
Country of Registration:	Country of registration of associated subject.
Reason for Association:	Give details of the connection between the Main Subject and associate subject.

Or:

**(Associated) Subject Already Exists as Main Subject of a Previous Disclosure.**

This section is provided for use if you have previously disclosed on the associated subject.

***Existing Disclosure ID:***

The reference number with which NCIS acknowledged the receipt of your previous disclosure, relating to the associated subject.

***Your Ref:***

The reference number or alphanumeric identifier that you allocated within your own file system to the previous disclosure on the associated subject.

**Reason for Association:**

Details of the connection between the Main Subject and associate subject.

**(Associated Subject) Address.**

Number, Street, City/Town, County, Country:

Full address of associated subject.

***Post Code:***

Post Code of address of associated subject.

***Type:***

Type of address of associated subject (ie home, accommodation, trading etc)

**Current:**

Is the address of the associated subject current, Yes or No.

**(Associated Subject) ID Information.**

***ID Information:***

Describes the type of Identification offered or taken (eg driving licence).

***Unique Information ID:***

Give details of the Identification taken (eg driving licence number)

**Extra Information / Description:**

Give any further information relating to

the Identification taken, which may be relevant or of use (eg if passport, country of origin).

General Information:

Give any further details that help to identify the subject.

**Reason for Suspicion.**

***This section requires a clear and thorough explanation of the grounds for your suspicion. (Submissions that do not provide reasons for suspicion cannot be accepted as disclosures by NCIS).***

**For Further Information.**

Contact the Duty Desk at the NCIS Economic Crime Unit:

Tel: 020 7238 8282.

Fax: 020 7238 8286.

**Guidance for the money laundering reporting officer – reporting responsibilities and suspicious transactions****Expect the unexpected**

The estimated size of the money laundering industry is \$500 billion being the third largest industry in the world. If your firm accepts money and/or has a client account (and very few do not) the chances are that something unusual will happen at your firm. Do not be suspicious without cause of your clients but do expect the unexpected.

Although the legislation does not require solicitors to detect money laundering, there will be instances when unusual factors occur which lead a member of staff or the partner concerned to be alerted that something “unusual” is occurring in a client’s transaction. The Money Laundering Reporting Officer (MLRO) would be well advised to obtain a copy of the guidance notes for the financial sector available from the Joint Money Laundering Steering Group department of the British Bankers’ Association (see further advice and guidance).

All solicitors’ firms will be caught by the substantive law but only those conducting investment business will find it mandatory to appoint a Money Laundering Reporting Officer. It is suggested that firms who are authorised to conduct investment business comply with the regulations by setting up the systems in case they conduct relevant financial business. Although a general awareness of money laundering is important for all staff, the reporting officer will have particular responsibility for deciding, on the basis of all the information available, whether to report a transaction to the authorities.

This guidance is aimed at the reporting officer in order to assist with that decision-making process. The key elements for the reporting officer to consider are:

- Who is my client?
- How well do I know the client?
- Is this our usual type of work?
- Is this a usual amount of money?
- Has the relationship/retainer changed significantly?
- Is this relevant financial business?
- Are the circumstances covered by legal professional privilege?
- Is the client or our firm being used to further a criminal purpose?

Should “cause for concern” arise in relation to a client’s transaction, the usual first step would be to consider what information, if any, the firm holds or what information do the staff have about the client concerned. It may be that, in relation to the overall picture, the reporting officer decides that he or she is not suspicious and therefore no report is made to the authorities. The reporting officer should ideally have sufficient seniority and authority within the firm to command information and where appropriate to discuss with the partners, in order to make his decision.

Should “cause for concern” arise in that there is an unusual aspect to a client’s transaction, it would be normal to expect the client to be given an opportunity to explain the circumstances and reasons for the unusual proposition. If, at all possible, it is preferable to avoid unusual transactions - procedures which filter out unusual propositions are encouraged at an early stage to protect the reputation of the firm and the solicitors’ profession at large. The initial client care letters can make



reference to the money laundering legislation. One aspect may be that the firm adopts an overall policy that cash sums over £X will not be accepted immediately by the firm or that cash is not accepted at all. In this way, unusual cash transactions can be avoided or explored early on. But remember dirty money can arrive through the banking system as well!

As well as the points above, the MLRO will wish to consider where, on the scale of seriousness, the information falls. At one end, there will be cause for concern and, at the other end of the scale of seriousness, there will be knowledge of money laundering. Once “cause for concern” arises, it may be that the client’s explanation is sufficient to allay all cause for concern and, therefore, no report is made and the transaction proceeds as usual. **It is important to remember that the “tipping off offence” does not occur unless and until the firm is aware that the authorities are investigating or a report has been made.** The solicitor/client relationship is one based on trust and the more information that the solicitor/firm has in relation to the client, the more likely it is that “cause for concern” will not result in a “suspicion” of money laundering, provided that the answers are satisfactory.

The MLRO, bearing in mind the solicitor’s duty of confidentiality, ought not to volunteer information to the authorities outside the ambit of the legislation. The statutory framework provides that there is immunity in relation to any duty of confidentiality where reports are made under the legislation (see Annex B table of offences). It would not be professionally proper and would be in breach of the solicitor’s contractual duty of confidentiality to reveal confidential information on the basis that no suspicion exists but either the police request the information or a disclosure is made simply “to protect the firm just in case”.

The MLRO appointment provides a hierarchy and an effective filtering system. In this way, discussions and further questions arise which will assist the MLRO in coming to his conclusion as to whether or not a suspicion exists and a report should be made. The MLRO’s task is to weigh up the available information, consider the client’s explanation in light of the unusual factors and consider whether more questions should be raised or whether the concerns are allayed or whether a report should be made. It is helpful to always keep a full record whether or not an external report to NCIS is made.

The checklist above will help the MLRO to pinpoint the areas for concern and help to unravel the potential difficulties under the money laundering legislation and the solicitor’s duty of confidentiality.

### **Typical areas of cause for concern**

#### **(i) Unusual settlement requests:**

It may be that unusually large amounts of cash are offered or cash is being sent by persons who are not your clients or that the source of funds or the way that settlement is to take place is unusual.

#### **(ii) Unusual instructions:**

Solicitors should be particularly wary of clients seeking to use the firm for an unusual niche practice or area of work not covered by the firm about which the client purports to be an expert. The solicitor’s professional judgment should be such that he familiarises himself with the transaction proposed so that he knows what is unusual or not. Alternatively, in accordance with good business practice, the solicitor should send the client to a firm which specialises in such a niche market.

(iii) Large sums of cash:

In certain circumstances “cleared funds” will be essential and clients can be confused with terminology such as “cash purchase”. The initial client care letter can set out the firm’s policy in relation to cash to avoid last minute difficulties. Solicitors should also be alert to any proposals which are an attempt to use the solicitor’s firm for nothing more than banking services.

(iv) The secretive client

Although face to face contact is not always necessary or possible, there will be circumstances when clients appear evasive or unwilling to provide information. Identity checks and verification of letterheads and further enquiries of the client can help to allay a solicitor’s cause for concern, as well as meeting the client, where possible.

(v) Suspect territory

It is important that solicitors do not suspect their clients without reason. The solicitor/client relationship is one based on trust. The Financial Action Task Force names those countries world-wide which are fighting the global problem of money laundering. Additional checks are required however in relation to Austria as although it is an EU/FATF country, the full requirements and procedures have yet to be put in place. The HM Treasury has also issued a formal notice drawing attention to deficiencies in the anti-money laundering legislation in the Caribbean state of Antigua and Barbuda. Extreme caution should be exercised in accordance with the 1996 advice by the Financial Action Task Force that the Seychelles should always require additional scrutiny (see Annex C).

## **Protection for your firm and the reputation of your partners and the profession**

### **Cause for concern and the money laundering reporting officer**

Some scenarios which can arise are listed here. This list is not exhaustive and the factors that apply will depend on the circumstances of each case. A solicitors' firm and its staff need to be aware of anything out of the ordinary which in his/her experience is not "usual".

A scale of seriousness "test" will assist the money laundering reporting officer (MLRO) to weigh up the cause for concern against how well the client is known, and the client's explanation and the solicitor's professional judgment.

Cause for concern is likely to arise where:-

- (i) a new client approaches the firm with a specialist niche market proposal of which the solicitor concludes "this is very impressive but I don't understand a word of it";
- (ii) a transaction is proposed but it transpires that the client is not the person you are dealing with i.e. they wish you to act for their niece/parents/elderly grandfather whom you have not met nor have they given you instructions;
- (iii) a well-established wealthy client proposes that your firm be involved in a new venture whereby sums will be held on account for the client. Upon probing and considering the details, the underlying cause for concern is that there do not seem to be any legal services being performed or required as would be expected in the normal course of a solicitor's practice;
- (iv) a client well-known to a partner wishes to deposit in cash or transfer to the firm a lump sum pending the proposed purchase of a house/boat/artwork in the UK. The transaction never occurs or subsequently falls through and the client requests the onward transmission of the money to a third party or parties;
- (v) an established client well-known to your senior partner wants to or may have already sent to you an over payment to that required on the completion of his conveyancing transaction;
- (vi) a new client approaches the firm with a simple proposition which then changes/develops radically once access has been gained to your client account.

In instances, (iii) (iv) and (v) the MLRO may conclude that "it seems our firm is being or has been used as a bank rather than a provider of legal services".

The MLRO will need to consider the "scale of seriousness" test and balance the issues in the light of his professional judgment consider whether a report to NCIS will be made.

## **Prevention is better than cure**

- Adopt a policy within the firm that cash or cash above a certain limit will not be accepted
- Client care letter – mention money laundering at the outset
- Specifically prohibit cash deposits or the onward transmission of your client account details to parties outside the solicitor/client relationship
- Train your staff (this will be mandatory if you conduct relevant financial business)
- Appoint a money laundering reporting officer (this will be mandatory if you conduct relevant financial business)
- Clarify your terms in order to avoid misunderstandings later or at the last minute - “cash purchase” can mean a transaction without the benefit of a mortgage but also literally cash.
- Know your client – the more information you have about your client the easier it is to weigh up any cause for concern or subsequent allegations of money laundering. Have you seen any business letterhead; met the client; would it be usual for a business of that calibre to have accountants; previous solicitors; is it a new market for the firm or for the client; is he best advised to go elsewhere to a firm which may have such experience; are you advising him or vice versa!
- Be curious and confident at the early stages with your new client – if the transaction is unusual do not accept the retainer immediately but set yourself conditions – prerequisites – before proceeding, enabling clarification to be provided. Should cause for concern arise, report to the MLRO.
- Do not be unnecessarily rushed by the new client's demands, particularly over unrealistic timetables if the circumstances are unusual. If necessary, the client will be best advised to go elsewhere to a firm with the capacity and/or expertise to deal with his proposals.
- Keep your common sense.