

Money Laundering Regulations for the United Kingdom and the Republic of Ireland



Scope and status

This factsheet provides guidance on the money laundering regulations for the UK and the Republic of Ireland.

This document has no regulatory status. It is issued for guidance purposes only. Nothing contained in this document should be taken as constituting the amendment or adaptation of the *ACCA Rulebook*. In the event of any conflict between the content of this document and the content of the *ACCA Rulebook*, the latter shall at all times take precedence.

Introduction

Money laundering has long been an offence in the United Kingdom and the Republic of Ireland and in recent years the provisions for the prevention and detection of money laundering have been extended and strengthened.

The relevant existing law on money laundering in the United Kingdom is found in:

- (a) the Terrorism Act 2000 as amended by the Anti-Terrorism, Crime and Security Act 2001;
- (b) the Proceeds of Crime Act 2002;
- (c) the Money Laundering Regulations 2003.

Section 340(11) of the Proceeds of Crime Act 2002 contains a detailed and wide-ranging definition of money laundering. For the purpose of this factsheet, money laundering also includes offences relating to terrorist finance, which are defined in sections 15 to 18 of the Terrorism Act 2000. In addition, the Money Laundering Regulations 2003 ("the 2003 Regulations") prescribe

procedures and measures which businesses must put into place.

The Republic of Ireland has equivalent legislation on money laundering, which is found in:

- (a) the Criminal Justice Act 1994, as amended;
- (b) the Disclosure of Certain Information for Taxation and Other Purposes Act 1996;
- (c) the Proceeds of Crime Act 1996;
- (d) the Criminal Assets Bureau Act 1996;
- (e) the Criminal Justice (Miscellaneous Provisions) Act 1997; and
- (f) the Criminal Justice (Theft and Fraud Offences) Act 2001.

This factsheet is intended to summarise the aspects of the money laundering legislation that are most relevant for members in the United Kingdom and Republic of Ireland. For ease of reference, the terms used are taken from United Kingdom legislation. Members in the Republic of Ireland should be aware that the requirements of the Irish legislation may differ in some respects.

Further reference to more detailed guidance, such as the Association's factsheets on money laundering, and/or to the legislation itself, is highly recommended. See also reference to the Joint Money Laundering Steering Group's Guidance Notes below.

In summary, the combined effect of the legislation is to make it an offence to:

- (a) fail to appoint a Money Laundering Reporting Officer (MLRO);
- (b) fail to implement internal procedures to comply with the legislation, including the provision of training;

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- (c) fail to undertake verification of identity of all new clients before commencing a business relationship;
- (d) obtain, conceal, retain or invest funds or property or to provide assistance to any person to do so, if members know or suspect, or have reasonable grounds to know or suspect, that those funds or property are the proceeds of criminal conduct or terrorist funding;
- (e) fail to report any knowledge or suspicion that such activities are being carried out, or fail to make such a report when there are reasonable grounds for knowing or suspecting that such activities are being carried out (“a suspicion report”);
- (f) do or disclose anything that might prejudice an investigation into such activities;
- (g) proceed with a transaction without the consent of the relevant authority following the submission of a suspicion report in accordance with a member’s firm’s internal procedures;
- (h) fail to comply with a direction of the relevant authority not to proceed with a transaction or business relationship;
- (i) fail to maintain records in accordance with legislative requirements.

Offences are punishable on conviction by imprisonment, or a fine, or both. Offences can apply whether or not money laundering has actually occurred. All partners within a practice and directors in a firm are potentially liable on a joint and several basis for breaches of the firm’s obligations, and all individuals are liable in respect of breaches of their individual obligations. There are, additionally, the risks of loss of authority to conduct business (both for the business and the individual), adverse publicity and loss of reputation.

The term criminal conduct includes any conduct, wherever it takes place, which would constitute an offence if committed in the United Kingdom. All crimes come within the scope of the legislation and there are no de minimis exceptions.

The principles underlying the requirements of the legal provisions apply to all members. It is, therefore, important that members do not underestimate the breadth of their applicability. Offences under the Proceeds of Crime Act 2002 and the Terrorism Act 2000 apply to all members, though the reporting requirements for members who are outside the scope of the 2003 Regulations are less stringent. Offences under the 2003 Regulations apply to all members who are in practice and/or who act as insolvency practitioners and will also apply to members in business depending on the type of work that they carry out.

Members should note that they will not be in breach of any professional duty of confidence if they report, in good faith, any money laundering knowledge or suspicions to the appropriate authority. Statutory provisions give protection against criminal action for members in respect of their confidentiality requirements. The protection applies even if the suspicions later prove to be groundless, provided that the suspicion reports were originally made in good faith.

Requirements of the 2003 Regulations

The 2003 Regulations lay down certain obligations to be fulfilled by members coming within their scope. These obligations are designed to assist members to detect and prevent their organisations being used for money laundering purposes. To achieve this, members must:

- (a) put into place systems, controls and procedures to ensure continuing compliance with the legislation;
- (b) appoint an MLRO to receive and assess money laundering reports from colleagues and to make reports to the National Criminal Intelligence Service (NCIS) (though the requirement to appoint an MLRO does not apply to sole practitioners with no employees or associates);
- (c) establish/enhance record keeping systems for all transactions and for the verification of clients’ identities;
- (d) establish internal suspicion reporting procedures; and
- (e) educate and train all staff, covering the requirements of the legislation, how to recognise and deal with potential

money laundering, how to report to the MLRO and how to identify clients. To ensure that firms are adequately protected from risk arising from the Proceeds of Crime Act 2002, the training obligation must be extended to cover all aspects of competence by staff in the jobs that they are undertaking in the firm.

Members should be aware that failure to comply with these obligations can lead to penalties.

Internal controls and policies

Internal controls and policies should be established and recorded to ensure that anyone who suspects money laundering knows how to report this information to their MLRO.

The internal controls and policies must provide the MLRO with the means by which he/she can judge the reasonableness of the suspicion and thereby assess which suspicions should be reported on to NCIS.

Client identification

The requirement to verify the identities of all clients is mandatory, although the extent of the work required can vary in certain circumstances.

The essence of the verification obligation is to complete it before any work is undertaken. It is not appropriate to commence any work with the intention and expectation of fulfilling this obligation at some later date. If verification is not achieved and recorded, no work should be undertaken at all.

The 2003 Regulations require that members obtain satisfactory evidence of the client's identity, either directly from the client or by other appropriate, independent means. Established guidance further requires that enough knowledge be obtained (and thereafter maintained up to

date) about the new client (Know Your Client (KYC)) to enable, on an ongoing basis, identification of that which is unusual for that particular client at any time and from that to identify that which is suspicious.

Members are reminded that the requirements to verify a client's identity apply to all members whose business comes within the scope of the 2003 Regulations and not just to members in practice.

Members are required to obtain evidence of identity for all clients where:

- (a) an ongoing business relationship is to be established or where the total value of any transactions is not known at the outset; or
- (b) a one-off transaction or a series of transactions in excess of (the equivalent of) 15,000 euros is to be undertaken.

Record keeping

Under the 2003 Regulations, the requirement to keep records is mandatory.

The 2003 Regulations require that all client identification records together with a record of all transactions, in a full audit trail form, must be maintained.

The 2003 Regulations require that records of transactions must be retained in a readily retrievable form for a period of at least five years following the completion of the transaction or series of transactions. Similarly, client verification records must be retained throughout the period of the relationship and for five years after termination of the relationship. These periods can be extended in the event that an investigation is current. Members are, however, also referred to section 3.14, Retention periods for books, files, working papers and other documents in the *ACCA Rulebook*.

Recognition of suspicion

It is impossible to define suspicion because what may be suspicious to one person may not be suspicious to another. Similarly, what may be suspicious for one client need not be for another.

Where there is a business relationship, a suspicious transaction or situation will often be one which is inconsistent with the client's known legitimate business or personal activities. Therefore, the key to recognition is knowing enough about clients and their businesses to recognise that a transaction or a series of transactions or any other activity is suspicious.

Examples of potentially suspicious transactions can include but are not limited to:

- (a) unusually large cash deposits;
- (b) frequent exchange of cash into other currencies;
- (c) a transaction where the counter-party to the transaction is unknown;
- (d) any activity inconsistent with the normal business activity;
- (e) any activity involving off-shore business arrangements where there is no clear business purpose underlying such arrangements.

The law, however, is quite clear. Regulation 7(1)(d) of the 2003 Regulations requires all suspected money laundering suspicions to be reported. If members have a suspicion of money laundering, they must report it immediately to their firm's MLRO. Suspicion reports must be made honestly, reasonably and in good faith. Any delay in making a suspicion report risks being viewed as providing assistance to a potential money launderer.

There is no obligation to quantify the certainty of suspicion. Suspicion is personal and subjective and is more than speculation but falls short of proof based on firm evidence.

However, failure to report promptly is in itself a criminal offence and members may be liable to penalties.

Reporting suspicious transactions

There is a statutory obligation on members to report knowledge or suspicions of money laundering to the appropriate authority. Members within the scope of the 2003 Regulations must report such knowledge or suspicions to their MLRO and, when satisfied that there are reasonable grounds for suspicion, MLROs must report to NCIS. Members outside the scope of the 2003 Regulations must report any knowledge or suspicions to a constable.

The obligation to report is irrespective of the amount involved or the seriousness of the offence. Any member who does not report knowledge or suspicions of money laundering to the appropriate authority is committing a criminal offence.

In the context of the legislation, an appropriate authority would include a police officer or a customs officer. However, the national reception point in the United Kingdom for disclosure of suspicions through a member's MLRO is the Economic Crime Unit of the National Criminal Intelligence Service (NCIS). The Unit can be contacted at P.O. Box 8000, London SE11 5EN (tel: 020 7238 8282/8607, fax: 020 7238 8286). Reports to NCIS must be made as soon as practicable.

In the Republic of Ireland, reports of suspected money laundering must be reported to the Garda Bureau of Fraud Investigation, Financial Intelligence Unit, "C" Branch, Harcourt Square, Harcourt Street, Dublin 2 (tel: (01) 666 3712, fax: (01) 475 4345) and the Revenue Commissioners, Underlying Tax Projects Office, 5th Floor, Hammam Buildings, 11–13 Upper O'Connell Street, Dublin 1.

Tipping off and prejudicing investigations

Members must guard against making any disclosure which may tip off (potential) money launderers that they are under investigation or doing any other thing that may prejudice such an investigation. Tipping off can be by word or action or by a failure to speak or act when such would normally be expected. Tipping off is in itself a criminal offence.

Members should, therefore, ensure that their actions do not prejudice an investigation of suspected money laundering offences. Members should not inform the person who is or will be subject to a suspicion report, or anybody else, that a report (either internally to an MLRO or externally) has been or will be made, or that the police or customs authorities are carrying out, or intending to carry out, an investigation. The punishment on conviction for tipping off is imprisonment, or a fine, or both.

A tipping-off offence cannot arise unless the person making the disclosure knows or suspects that a suspicion report has been made. However, an offence of prejudicing an investigation can arise regardless of whether a report has, or is suspected to have, been made.

Method of reporting

Any report to or by an MLRO should contain sufficient information indicating the nature of, and the reason for, suspicion. NCIS produces a standard disclosure form which should be used by MLROs when making a report. If a particular offence is suspected, this should be stated to enable the report ultimately to be passed to the correct agency.

The report should include as much as possible of the following:

- (a) suspect's full name, address, date of birth, nationality, occupation and employer;
- (b) any identification or references seen or recorded;
- (c) details of transactions or activities giving rise to knowledge or suspicion of money laundering, including amounts, dates, currencies, sources and estimations; and
- (d) any other information that may be relevant to the investigation, such as persons associated with the suspect.

Fiscal offences and money laundering

Tax-related offences are not in a special category. Tax evasion is a crime, the proceeds of which can be laundered in exactly the same way as those from drug trafficking, terrorist activity, theft, fraud, etc. Offences may relate to direct tax such as income tax or corporation tax, or they may relate to indirect tax such as VAT. An action carried out abroad will be relevant if the action would have been an offence had it taken place locally. There is no need for there to be any consequential effect on the local tax system.

The money laundering legislation affects members who offer services that could lead to disclosures by the member or his/her client to the tax authorities. If there are reasonable grounds to know or suspect that potential disclosures relate to criminal conduct, a report should also be made to the appropriate authority.

Reports by members' MLROs to the appropriate authority may be used in furtherance of criminal enquiries.

Members should note that a report passed through their MLRO to NCIS/the Garda should not be considered to be a substitute for a proper disclosure to the tax authorities.

Where a report has been made to the appropriate authority, the client must not be informed, since this would be considered tipping off under the terms of the legislation.

Members are referred to guidance contained in section 3.5, Professional duty of confidence in relation to defaults and unlawful acts of clients and others, of the *ACCA Rulebook*, and in particular paragraphs 87 to 105 in respect of tax irregularities discovered by them.

Joint Money Laundering Steering Group

From the earliest days of anti-money laundering in the United Kingdom, the financial services sector has had the benefit of a body known as the Joint Money Laundering Steering Group (the JMLSG), now a company limited by guarantee and whose members are 16 trade associations collectively representing the financial services sector. With the broadening of the scope of regulation through the 2003 Regulations, other bodies have been moved to seek membership of the JMLSG, including the CCAB to provide representation for the accountancy profession in the United Kingdom.

The JMLSG issues Guidance Notes to assist its firms in their compliance with their obligations. To date, this guidance has been the only guidance that has been published and formally recognised as being in accordance with Section 5(3) of the Money Laundering Regulations 1993, as superseded by Section 3(3) of the 2003 Regulations. In view of the legal protections that can be gained from being able to demonstrate action having been taken that is consistent with such guidance, members are recommended to obtain and have regard for the general guidance contained in the JMLSG Guidance Notes for the Financial Services Sector. The JMLSG Guidance Notes should be read in conjunction with and not as an alternative to guidance issued by ACCA through the *Rulebook* or otherwise.

Further information

Members faced with money laundering issues

- should refer to the *ACCA Rulebook* at www.accaglobal.com/professionalstandards/rules/
- may call upon the Advisory Service section within ACCA for confidential advice
- obtain guidance from ACCA's money laundering resource at www.accaglobal.com/transparency/moneylaundering.

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