

Money Laundering Law

A Regulatory bulletin from DLA Piper





Publication of the Serious Crime Bill

On 17 January 2007, the Serious Crime Bill ("**Bill**") and a set of explanatory notes were introduced in the House of Lords.

The main proposals included in the Bill are:

- the introduction of new civil "Serious Crime Prevention Orders", which can be granted by the High Court.¹ An order can contain any prohibitions, restrictions, requirements or other terms, which the High Court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime.² The restrictions and prohibitions that may be imposed include those in relation to an individual's financial, property or business dealings, an individual's working arrangements or the premises to which an individual has access.³ If a person fails to comply with an order they may be fined and/or imprisoned for up to 12 months on summary conviction or five years on indictment;⁴
- the amendment of the Proceeds of Crime Act 2002. This will transfer a number of functions of the Assets Recovery Agency in relation to investigation powers, financial investigators and search warrants, to the Serious Organised Crime Agency;⁵
- the creation of a number of new offences in relation to enabling or assisting crime. A person will be guilty of an offence "if he does an act capable of encouraging or assisting

the commission of an offence; and he intends to encourage or assist its commission."⁶ A person can also commit an offence "if he does an act capable of encouraging or assisting the commission of an offence; and he believes that the offence will be committed or that his act will encourage or assist its commission."⁷ If the relevant offence is punishable by imprisonment, then a person found guilty of enabling or assisting may be liable for a term of imprisonment not exceeding the maximum term for the relevant offence;⁸

- the re-classification of a number of offences under the Copyright, Designs and Patents Act 1988 and the Trade Mark Act 1994 as "serious offences". As a result of these proposals, if a person is found guilty of dealing in or distributing infringing copies of works then a number of restrictions and prohibitions under a Serious Crime Prevention Order could be imposed upon him/her; and
- the sharing of personal data by a public body for the purpose of preventing fraud. These proposals have been the subject of criticism from human rights organisations and the press because they will allow the government to use personal data which has been collected for one purpose, to be used for another unconnected purpose.⁹

The Bill as it currently stands would provide the government with a number of new ways to fight serious crime. The Bill is, however, still in the early stages and therefore there is a risk that these powers will become diluted as time passes.

¹ Section 1(1) of the Serious Crime Bill

² Section 1(3) of the Serious Crime Bill

³ Section 5 of the Serious Crime Bill

⁴ Section 25 of the Serious Crime Bill

⁵ Section 66 of the Serious Crime Bill

⁶ Section 39 of the Serious Crime Bill

⁷ Section 40 of the Serious Crime Bill

⁸ Section 53 of the Serious Crime Bill

⁹ Section 61 of the Serious Crime Bill

New EU Regulation On The Transfer Of Funds

On 1 January 2007, the EC regulation on information on the payer accompanying transfers of funds ("**Regulation**") came into force. The Regulation implements a number of recommendations made by the Financial Action Task Force in relation to wire transfers.

The Regulation applies to all transfers of funds except those that have been deemed to present a low risk of money laundering or terrorist financing. A list of exemptions is contained in Article 3 of the Regulation.¹⁰

The Regulation requires payment service providers ("**PSPs**") to ensure electronic transfers of funds are accompanied by specific information about the payer.

The Regulation imposes a number of obligations on the PSP of the payer:¹¹

- If the transfer is a domestic transfer or a transfer between member states, the PSP must provide "simplified information" on the payer. "Simplified information" is defined in Article 6 of the Regulation as the "account number of the payer or a unique identifier, which allows the transaction to be traced back to the payer."¹²
- If the transfer is to an account outside the EU, then the PSP of the payer is required to provide "complete information" on the payer. "Complete information" is defined in article 4 of the Regulation as the payer's "name, address and the account number."¹³

- Prior to the transfer, the PSP is required to ensure that the information, either simplified or complete, is accurate.
- The PSP is required to keep a record of the payer's details for five years.
- The PSP is also required to reply to a request from a competent authority, responsible for tackling money laundering or terrorist financing, in a prompt manner.

The PSP of the payee also has a number of obligations:¹⁴

- The PSP must ensure that the required information on the payer is sent with the transfer. It should have procedures in place to determine if any information is missing as this may indicate a suspicious transaction.
- If the PSP of the payer is outside the Community, the PSP of the payee is required to ensure enhanced due diligence is carried out.
- If the PSP of the payee becomes aware of missing information, they must reject the transfer or ask the PSP of the payer for complete information.

- The PSP of the payee is also required to maintain a record of all the information it has received on the payer for a total of five years. In addition, they must also respond promptly to any requests from a competent authority involved in tackling money laundering or terrorist financing.

While the Regulation appears to impose a number of requirements on both the PSP of the payer and the PSP of the payee, many of the requirements are the same as those under the old UK Anti-Money Laundering regime. The UK is required to impose penalties for any failure to comply with the Regulation, however, these will not apply until 15 December 2007.

The aim of the Regulation is to enable the source of funds to be traced and therefore provide the authorities with information, which can be used to help combat money laundering and terrorist financing. This should assist in the prevention, investigation and detection of money laundering and terrorist financing.



¹⁰ Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information of the payer accompanying transfers of funds

¹¹ Chapter 2 of Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information of the payer accompanying transfers of funds

¹² Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information of the payer accompanying transfers of funds

¹³ Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information of the payer accompanying transfers of funds

¹⁴ Chapter III of Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information of the payer accompanying transfers of funds

Consultation On Draft Money Laundering Regulations 2007

In October 2005, the Third Money Laundering Directive ("**Directive**") was adopted, which is required to be implemented in the UK by 15 December 2007. In July 2006, HM Treasury conducted a consultation concerning the changes required to domestic legislation to ensure the directive is fully implemented. On 22 January 2007, HM Treasury published its consultation on the draft Money Laundering Regulations 2007, which outlines the responses received to the July 2006 consultation.¹⁵

In the July 2006 consultation, a number of definitions were discussed, namely:

- "auditor" - HM Treasury has decided to define "auditor" in line with the Companies Act 1989.¹⁶
- "business relationship" - HM Treasury has now determined that it is the firm, and therefore not the customer, that must have "the necessary expectation that the relationship will have an element of duration."
- "external accountants" and "independent legal professionals" - These have now been drafted in accordance with the Financial Action Task Force glossary definitions. As a result, internal professionals that are employees of firms other than professional firms and professionals working for public authorities, will be excluded.¹⁷
- "financial institution" - HM Treasury proposes to define this as "one that carries out an operation on behalf of a customer, excluding persons who are dealing on their own account and not providing a service to a customer."¹⁸

- "beneficial owner" - This is defined in the Directive as the natural person who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The threshold for ownership or control is 25% of the business. On 12 January 2007 the Law Society published a letter it sent to HM Treasury voicing its concern with regard to this definition.¹⁹ The Law Society has urged HM Treasury to provide greater clarity in the definition and stated that "it is not acceptable for the government to pass the responsibility of interpreting the opaque language of the Directive to practitioners." The letter set out a number of scenarios which illustrate the problems posed by the proposed definition.²⁰

The Directive contains a number of customer due diligence requirements and requires firms to adopt a risk based approach to these requirements. These requirements have been transposed directly into the Money Laundering Regulations. HM Treasury is, however, proposing to exclude from the requirements an obligation to identify and verify beneficial ownership of trustees of a bond issue.

The draft regulations set out, in Regulation 8, the requirements that casinos must comply with in respect of customer due diligence. HM Treasury has proposed that for most casinos, customer due diligence must be carried out when the customer enters the premises. If a casino can, however, demonstrate that it has procedures in place for identifying higher risk customers, then the regulations would allow the casino to only verify a customer's identity when they reached the threshold of EUR 2,000 chips exchanged or gambled.²¹ Internet gambling poses a larger threat due to the absence of face to face contact with the customer. HM Treasury has, therefore, proposed to provide additional guidance for internet casinos.

In early 2007 HM Treasury is intending to publish an anti-money laundering and terrorist financing strategy document, which will include responses to its September 2006 consultation on the regulation of money service businesses. In mid-2007 the draft regulations are due to be laid before Parliament.

¹⁵ Introduction of HM Treasury's "Implementing the Third Money Laundering Directive: Draft Money Laundering Regulations 2007"

¹⁶ Section 2 (1) the Draft Money Laundering Regulations 2007

¹⁷ Section 2.6 of HM Treasury's "Implementing the Third Money Laundering Directive: Draft Money Laundering Regulations 2007"

¹⁸ Section 2.9 of HM Treasury's "Implementing the Third Money Laundering Directive: Draft Money Laundering Regulations 2007"

¹⁹ Letter from the Law Society addressed to the Chief Secretary to the Treasury, dated 11 January 2007

²⁰ Letter from the Law Society addressed to the Chief Secretary to the Treasury, dated 11 January 2007

²¹ Regulation 8 of the Draft Money Laundering Regulations 2007

JMLSG Suggested Framework For Company Money Laundering Reporting Officers

Money Laundering Reporting Officers ("**MLRO**") are under an obligation to present an annual report to senior management. This is set out in the FSA's Senior Management Arrangement Systems and Controls Sourcebook (SYSC) at 3.2.6G. While this imposes an obligation on the MLRO, it does not provide any guidance as to the format for such a report.²²

The Joint Money Laundering Steering Group ("**JMLSG**") has published a suggested framework for MLROs. The suggested framework, is, however, only intended to be an aid and should not be considered as formal guidance.

The suggested framework is split into four key areas. The first area relates to those within the firm responsible for anti-money laundering systems and controls, and the structure within which they operate.²³

The second area relates to operations of systems and controls²⁴ and should include a breakdown of the operation of the anti-money laundering systems, for example, staff training, documentation of policies and risk assessments.

The third area provides a summary of business issues,²⁵ which should outline the business operations covered by the firm in the last year. Any implications for money laundering controls should be highlighted in addition to a summary of the type and size of the customer base over the last year and a summary of customer due diligence procedures.

The final part of the framework should contain conclusions and recommendations for action²⁶ which should comprise an overall assessment of the anti-money laundering systems and controls, including a summary of

any material control failures that have been identified and any remedial action that was taken. Areas requiring remedial or preventative action should also be identified and prioritised.

The suggested framework also includes an annex to the report containing details of the MLROs' duties, the method used for identifying suspicious transactions and any improvements that should be carried out. It also recommends that a summary of money laundering cases that have arisen where reports have not been made should be included together with a breakdown by the business areas of the number of reports that have been made.

The JMLSG recognises that the level of detail included in each of the identified areas will largely depend on the type and size of the firm concerned. As a result, not all of the points raised in the suggested framework will be relevant to every firm and therefore MLROs must exercise discretion when drafting the report.



²² Joint Money Laundering Steering Group's suggested framework for the MLRO annual report

²³ Joint Money Laundering Steering Group's suggested framework for the MLRO annual report

²⁴ Joint Money Laundering Steering Group's suggested framework for the MLRO annual report

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FSA Annual Financial Crime Conference

On 22 January 2007, Philip Robinson, Financial Crime and Intelligence Division Director of the FSA, made a speech at the FSA's annual financial crime conference. In his opening remarks Mr Robinson commented that "financial crime is on the increase".²⁷

Philip Robinson highlighted the importance of firms adopting a risk-based approach. He emphasised the limited resources available for the fight against money laundering and therefore the importance of focusing resources on the areas presenting the greatest risk. He stated, "We need to ensure that the money we spend delivers real benefits."²⁸

He explained that in 2007, the FSA will be carrying out an assessment on the implementation of the revised JMLSG guidance by firms across the industry. In conducting this assessment, the FSA will focus on whether firms have adopted a genuine risk-based approach. The FSA will also look at whether firms have chosen to follow the new simplified ID requirements contained in the JMLSG guidance. These are considered as areas in which the provision of resources can be used more efficiently.

His speech emphasised that the risk-based approach has now become embedded in the Financial Action Task Force ("**FATF**") recommendations which form the basis of global anti-money laundering standards. The FSA

has been in discussions with the FATF evaluation team on how the risk-based approach should be implemented and practised. The risk-based approach has also been introduced to anti-money laundering at a European level by the Third Money Laundering Directive. The Third Money Laundering Directive must be implemented by all EU member states by 15 December 2007.

Philip Robinson also addressed the new Fraud Act. He explained that the intention of the Act is to simplify the law and reduce the length and complexity of trials, thereby addressing two of the main criticisms of the current system. He also explained that the Act will provide clear definitions of fraud and by doing so it is hoped that fewer cases will be lost due to technical points.

He also emphasised the importance of raising international awareness on both traditional threats faced by consumers and the new problems. It was emphasised that providing consumers with clear advice, communicated effectively, could greatly assist in reducing fraud.

²⁷ www.fsa.gov.uk, speech titled "Speech by Philip Robinson, Financial Crime & Intelligence Division Director, FSA Annual Financial Crime Conference, 22 January 2007."

²⁸ www.fsa.gov.uk, speech titled "Speech by Philip Robinson, Financial Crime & Intelligence Division Director, FSA Annual Financial Crime Conference, 22 January 2007."



Transparency International's Action Plan For Anti-Corruption Reforms

The United Nations Convention Against Corruption ("**UNCAC**") is the first global instrument in the fight against corruption. Currently UNCAC has been signed by 140 countries and ratified by 80. Transparency International therefore made a renewed call for its ratification and implementation.

UNCAC requires countries to criminalise a large number of acts, including bribery, embezzlement of public funds and money laundering.

UNCAC provides "a template for legislative changes and offers cross-border anti-corruption standards".

On 1 December 2006, Transparency International presented an action plan to the foreign ministers of the G8 and their Broader Middle East and North

African regions ("**BMENA**"), which suggests governments should:

- monitor the implementation of UNCAC;
- implement legislative changes and institutional changes to improve asset recovery;
- provide developing countries with the funding for technical assistance;
- ensure the protection of whistleblowers.

Kamal Mesbahi, member of the Board of Transparency Maroc and head of the Transparency International Delegation, commented "It is intolerable if governments sign the anti-corruption convention, but don't do anything or stay outside altogether."²⁹

²⁹ www.transparency.org, press release titled "G8 and BMENA government's commitment to fight corruption needs effective follow-up, Transparency International delegation presents Action Plan for anti-corruption reforms to foreign ministers"



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