

The following questions and answers have been prepared for illustrative purposes only and should not be relied upon or otherwise treated as constituting legal advice. Members who require clarification on their statutory obligations should obtain independent legal advice or otherwise contact the Institute on 0131 347 0271 (confidential line) regarding specific reporting instances or 0131 347 0242 regarding general procedural ones.

OTHER

***Query:** I have heard that where the police have been unable to prosecute a criminal case successfully, it can refer this to the Serious Organised Crime Agency (SOCA) who can take further action. Is this true?*

***Answer:** Yes. Where a law enforcement agency or prosecution authority has a criminal case which it has been unable to prosecute successfully, it can refer the case to SOCA for consideration for civil recovery or tax action if it meets the following criteria:*

- recoverable property has been identified and has an estimated value of at least £10,000;
- recoverable property has been acquired in the last 12 years (20 years for tax);
- recoverable property includes property other than cash, cheques and the like (although cash can be recovered in addition to other property);
- there is evidence proven to civil standards of criminal conduct;
- for tax cases there must be reasonable suspicion that untaxed income has resulted from criminality.

***Query:** I am the Money Laundering Reporting Officer for my firm. Since the Money Laundering Regulations 2007 came into force last year, we have done our best to implement appropriate systems and controls. However, I understand we need to undertake some form of review. What should this involve and when does it need to be carried out?*

***Answer:** The Money Laundering Regulations 2007 require businesses to monitor and manage their compliance with, and internal communication of, their policies and procedures, including their systems for risk assessment and management, as well as their other anti-money laundering policies and procedures. The primary guidance for accountancy firms, Anti-money laundering guidance for the accountancy sector, issued by the Consultative Committee of Accountancy Bodies (CCAB), requires businesses to develop systems for periodic testing that policies and procedures comply with legislative and regulatory requirements. Businesses must also monitor their compliance with their policies and procedures including reporting to senior management on compliance and addressing any identified deficiencies.*

The review should therefore involve reviewing the firm's money laundering procedures, particularly in relation to customer due diligence procedures and ongoing monitoring and record keeping. The firm should also ensure it has adequate procedures for the education and training of all principals and employees, and that these are adequately communicated to these employees on an ongoing basis. The procedures in relation to recognising suspicious transactions, reporting to the MLRO, risk assessment and monitoring and managing compliance should also be reviewed. The review should assess whether these procedures are adequate, and update and amend where appropriate.

The firm should then ensure that they are complying with their policies and procedures. A starting point for the review could involve ensuring all staff have been provided with adequate training on their obligations under the Proceeds of Crime Act 2002, Terrorism Act 2000 and the Money Laundering Regulations 2007, as well as on the firm's internal procedures, by checking annual declarations have been obtained. The firm should also ensure that the procedures have been followed in relation to new and existing clients, and that the risk-based approach to customer due diligence has been followed, with appropriate identification procedures undertaken. Where reports have been made, the firm should ensure that the appropriate process has been followed, firstly by the employee identifying the suspicion, and then by the Money Laundering Reporting Officer (MLRO). For reports made to the MLRO, it may be appropriate to check all reports have been followed, that the decision whether or not to report to the Serious Organised Crime Agency (SOCA) is adequately considered and documented, and that any acknowledgements from SOCA have been appropriately retained.

The extent of the review undertaken will vary depending on your firm's procedures, and the above list is by no means intended to be exhaustive. Many organisations, including the Institute's Practice Management Service, now offer money laundering compliance review services. This provides an independent and objective review of your procedures, along with a variety of other useful information and checklists. Compliance review checklists are also available from many of these companies, while Chapter 14 of the Institute's General Practice Procedures Manual also includes a helpful checklist to help with this review.

Unfortunately, the Regulations do not provide any indication of what an appropriate timescale for periodic review would be. The Institute recommends that such a review is undertaken annually.

For more information or guidance on any of the issues identified above, refer to the anti-money laundering area of the ICAS website at: www.icas.org.uk/site/cms/contentCategoryView.asp?category=4424. To discuss a compliance review with the Practice Management Service, contact Ken McManus on 0131 347 0246.

Query: *I would like to include a paragraph in my engagement letters regarding money laundering legislation but am not sure how much information to supply. Can you help?*

Answer: There has been a great deal of debate as to whether a paragraph on this subject should be included in engagement letters and if so, the amount of information to be supplied to clients. The general consensus appears to be that due to the varied reaction of clients that this would best be dealt with by referring to the obligations the firm has and inviting the client to request more information if required.

The following might be used:

"The Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007

We are obliged to comply with the terms and conditions of the above legislation. We will provide details if required."

Query: Above you gave a paragraph which could be included in engagement letters. This was quite brief and merely stated that we are obliged to comply with the terms and conditions of the legislation and will provide details if requested. We would like to inform clients that we are not permitted to discuss reporting to the Serious Organised Crime Agency (SOCA). Can you help?

Answer: Perhaps the following alternative would be more suitable;-

“Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007

We have a statutory obligation under the above legislation to report to the Serious Organised Crime Agency (SOCA) any reasonable knowledge or suspicion of money laundering. Any such report must be made in the strictest confidence.

In fulfillment of our obligations neither the firms' partners nor staff may enter into any correspondence or discussions with you regarding such matters.”

Query: I have a client who accepts cash payments. Occasionally a transaction would be in excess of the equivalent of 15,000 euros. I have indicated to the client that he should be registered with HMRC as a high value dealer. He has indicated that he has read that the transaction can be split into several cash payments to avoid being treated as a high value dealer. Is this correct?

Answer: An individual would be considered as a high value dealer if he undertakes “the activity of dealing in goods of any description by way of business (including dealing as an auctioneer) whether a transaction involves accepting a total cash payment of 15,000 euros or more”. This means that it is the transaction rather than the number of payments involved that is relevant. Therefore if you buy a painting for £20,000 and agree to pay this by 10 monthly instalments this would be a single transaction. It has been argued that where several items are sold at the same time that these should be treated as individual sales. However, this would be risky as it is unclear whether Customs would consider the individual sales as part of one order and hence one transaction. I would therefore discourage your client from taking this approach.

Query: I have just been appointed as the firm's Money Laundering Reporting Officer. On reviewing our procedures I have established that an annual compliance review of the firm's money laundering procedures has not taken place in previous years. Compliance reviews are carried out in many other accounting firms. Can you please let me know if these are compulsory?

Answer: The Money Laundering Regulations 2007 require firms to establish and maintain appropriate and risk-sensitive policies and procedures relating to the monitoring and management of compliance with, and the internal communication of, such policies and procedures, in order to prevent activities related to money laundering and terrorist financing. The guidance issued by the Consultative Committee of Accountancy Bodies (CCAB) states business should ensure that they have systems for periodic testing that policies and procedures comply with legislative and regulatory requirements. The Regulations do not expressly state that an annual compliance review is necessary, but it is unlikely anything less frequent will be deemed sufficient. Consequently it is recommended that a full compliance review be performed annually.

Query: I have heard that a solicitor was jailed for having the proceeds of crime in his clients' money account. My understanding is that the solicitor did not know that the money held was the proceeds of crime.

My firm holds a substantial amount of money in our clients' money account and I am obviously concerned that we may inadvertently hold the proceeds of crime. Can you provide me with more details regarding the case?

Answer: I am not sure which case you are referring. You are possibly thinking about the case of Brian Dougan, a solicitor based in Northern Ireland who was jailed for three months on a charge of converting or transferring the proceeds of criminal conduct.

Mr Dougan allowed £66,500 to pass through his client's account while carrying out conveyancing work for a convicted criminal. Although he did not initially realise the cash came from a criminal source, he apparently continued with the work even when he became suspicious.

When sentencing Mr Dougan, the Judge accepted that he was a naive victim of a sophisticated criminal, but said that solicitors must "take the greatest care" to stop others using their respectability to launder cash.

Mr Dougan was originally on trial for the more serious charge of conspiring to conceal the proceeds of crime but pled guilty to the less serious charge as soon as it was offered.

Query: *I have heard that HM Customs & Revenue (HMRC) will be monitoring accountants and tax advisors. Is this the case?*

Answer: All those who are regulated for money laundering purposes will need to be monitored and supervised for their compliance with the statutory rules. ICAS will assume responsibility for this function with regard to its own members. However, those who do not have a recognised supervisory authority will be monitored by HMRC. They will require to be registered and pay a registration fee. Failure to do so will result in penalties.

Full details can be found on the HMRC website.

Query: *One of my clients provides a service to businesses by forwarding their mail. I have told them that they must register with HMRC but they refuse to do so. Can you confirm that I am correct?*

Answer: I can confirm this is correct. This clearly falls within the legislation and you should encourage your client to register.

Query: *We have just taken on a client who is setting up a franchise network operating within the scope of the money laundering legislation. We are advising him to register with HMRC. What is the position regarding franchisees – are they to be included in the registration application?*

Answer: You have not really told me enough about the relationship between the franchisor and franchisees to let me respond properly. It will depend on the agreement between the parties. If your client is responsible for the business practices and set in place the anti money laundering controls, policies and procedures in respect of business carried out with customers on his behalf, then the premises will need to be included in the registration. However, if not, then the franchisees will have to register individually. If you are unclear as

to whether your client should register the franchisees then further advice can be obtained from the HMRC National Advice Service on 0845 010 9000.