technical factsheet 86

Initial anti-money laundering guidelines for accountancy practices

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The Consultative Committee of Accountancy Bodies (CCAB) has issued guidance on the requirements of the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003 (ACCA Technical Factsheet 85). This is available on ACCA's website at www.accaglobal.com.

CCAB is in discussions with a view to becoming a member of the Joint Money Laundering Steering Group (JMLSG). The JMLSG's guidance notes are widely recognised as the leading source of guidance on anti-money laundering practice in the United Kingdom (www.jmlsg.org.uk). They are also the only guidance recognised under Regulation 5(3) of the Money Laundering Regulations 1993 (the Regulations). Since the effective date of the Proceeds of Crime Act 2002, anyone charged with breaching the Regulations may use as a defence evidence of compliance with the relevant guidance in the JMLSG Guidance notes. Following the Proceeds of Crime Act 2002, courts are obliged to have regard for such evidence. Reliance on the JMLSG guidance notes is not restricted to firms whose professional bodies and trade associations are members of the JMLSG.

The December 2001 edition of the JMLSG guidance notes, current as at 1 June 2003, is due to be replaced by an updated edition that will reflect the Money Laundering Regulations 2003; that new edition of the guidance notes should then be the version carrying recognised guidance status. No other guidance is presently foreseen as carrying the same legal status in the near future.

Although the CCAB is not currently a member of the JMLSG, CCAB members and their member firms should all be aware of the JMLSG guidance and the status it currently holds in law.

This ACCA UK Technical Factsheet provides additional guidance for members in practice and should be read alongside CCAB guidance.

This factsheet is for guidance purposes only. It is not a substitute for obtaining specific legal advice. Whilst every care has been taken with the preparation of this factsheet neither ACCA UK nor its employees accept any responsibility for any loss occasioned by reliance on the contents.

1 INTRODUCTION

1.1 Money laundering is a global phenomenon that affects all countries in varying degrees. By its very nature it is a hidden activity and therefore the scale of the problem and the amount of criminal money being generated either locally or globally each year is impossible to measure accurately.

1.2 Most serious and organised criminal activity is either directly or indirectly driven by the desire to make money. The laundering of criminal profits is a fundamental component of most criminal ventures.

1.3 Money laundering is the process by which criminals attempt to conceal, move and legitimise the money they make from crime. It may be banked or spent on valuable assets or a lavish lifestyle. Much of it will be used to fund further criminal activities, financing illicit trades, paying off associates, and increasing the power and influence of individual criminals and groups.

1.4 From September 2003 (delayed from its June start date), the scope of the European anti-money laundering regime and accordingly the UK legislation will extend substantially the responsibility to look out for and report suspicions and evidence of money laundering on all external accountants, auditors, insolvency practitioners and tax advisors.

1.5 Failure to report actual or suspicion of money laundering, or failure to have adequate policies and procedures and training arrangements to guard against being used for money laundering, may call into question the integrity of and standards of care and diligence exercised by the firm or individual member.

1.6 All members and their staff, whether they work in practice or not, must be aware of the law on money laundering. Individuals who are not so aware, and the senior management of firms which do not have the necessary procedures, put themselves at risk of criminal prosecution. Failure to report can result in up to 14 years imprisonment and/or a heavy fine.

1.7 Members should note the *Rulebook 2003* (3.3.1) refers to the Money Laundering Regulations 1993. It does not address the requirements of the Proceeds of Crime Act 2002 or Money Laundering Regulations 2003. It will however be updated in respect of the 2004 *Rulebook*. The *Rulebook* still provides useful guidance for members and should be used for reference.

2 BACKGROUND

2.1 Despite the variety of methods employed, the money laundering process is typically accomplished in three stages. These may comprise numerous transactions by the launderers, which could raise suspicions of underlying criminal activity:

- Placement – the physical disposal of the initial proceeds derived from illegal activity
- Layering – separating illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity. Such transactions are often channelled via shell companies or companies with nominee shareholders and/or nominee directors
- Integration – the provision of apparent legitimacy to criminally-derived wealth. If the layering process has succeeded, integration schemes place the laundered proceeds back into the economy in such a way that they re-enter the financial system appearing to be normal business funds.

2.2 The three basic stages may occur as separate and distinct phases. They may occur simultaneously or, more commonly, they may overlap. How the basic steps are used depends on the available laundering mechanisms and the requirements of the criminal organisations concerned.

2.3 Money launderers are likely to be plausible people and their business activities will often be difficult to distinguish from those of the legitimate client. Like the legitimate client, the launderer will need audit services and a whole range of financial, tax and business advice. Some areas of an accountant's work may be more vulnerable than others to the involvement of money launderers, but it is dangerous to regard any area as immune.

3 LEGISLATION

3.1 Currently the UK's anti-money laundering legislation comes in two parts.

3.2 The first part, the criminal law, the Proceeds of Crime Act 2002 and the Terrorism Act 2002 as amended by the Anti-Terrorism, Crime and Security Act 2001, applies to all persons (individual and corporate) who reside or work in the UK. It is the criminal law that sets the offences and penalties for assisting in laundering the proceeds of crime.

3.3 The second part comes in the form of the UK's Money Laundering Regulations 2003 (the Regulations) that replace the Money Laundering Regulations 1993, which implemented the requirements on credit and financial institutions that are contained in the 1991 European Money Laundering Directive. While the 1993 Regulations primarily cover the financial services sector, their scope also extends to accountants in practice who undertake investment business.

3.4 Earlier scope for the definition of money laundering is no longer relevant. For the purposes of the new legislation, money laundering is defined more widely and includes offences relating to the proceeds of terrorism or any other crime (e.g tax evasion).

3.5 The new legislation was intended to apply from June 2003. The revised date is September 2003, although this is yet to be finalised. However, for accountants undertaking investment business changes arising from the Proceeds of Crime Act 2002 took effect from 24 February 2003.

3.6 Members coming newly within the scope of regulation through 2003 Regulations are advised to ensure appropriate procedures are in place by September 2003.

4 MEMBERS EMPLOYED OUTSIDE PRACTICE

While these guidance notes have been prepared primarily with firms and members employed in practice in mind, much of the material will also apply to members employed elsewhere. Members employed in financial services should refer, where necessary, to the guidance produced by the Joint Money Laundering Steering Group, 'Money Laundering – Guidance Notes for the Financial Sector' which is available from Pinners Hall, 105-108 Old Broad Street, London EC2N 1BX. (www.jmlsg.org.uk). Members employed in other sectors may also find that guidance is available from any external regulator or trade body. In the absence of suitable guidance, members should consider the procedures recommended for firms in this factsheet and adapt them as appropriate.

5 WHAT FIRMS AND MEMBERS NEED TO DO

5.1 Firms should consider the range of services they provide and apply judgement as to how far the requirements of the 2003 Regulations should be applied to activities. Firms will appreciate that there are practical benefits in applying standard procedures to all their partners and staff and across their entire range of services. Consistency of approach ensures complete coverage of the areas where the regulations are mandatory and avoids difficulties with clients and people who receive or provide services which sometimes fall into relevant financial business but other times do not.

5.2 Similarly, standard procedures to require partners and staff to recognise and report any suspicions of money laundering in the course of their work not only ensures that the requirements of the regulations are met whenever they apply, but also gives protection to individuals against breaching the disclosure provisions of the primary legislation. The guidance in this Technical Factsheet will need to be tailored where procedures described are unsuitable for the client's particular circumstances. However, care should be exercised to ensure that any "tailoring" undertaken nevertheless provides compliance with statutory obligations.

5.3 Under the 2003 Regulations, firms are required to take the following steps:

- appoint a Money Laundering Reporting Officer
- establish internal procedures appropriate to prevent money laundering

- train staff - in accordance with the Regulations 2003, including how to recognise 'money laundering' and how to identify clients and how to report suspicions to the MLRO
- verify the identity of new clients and maintain evidence of identification
- report suspicions and knowledge of money laundering to SOCA
- record keeping - keeping prescribed records.

The above requirements are discussed in more detail below.

5.3.1 **Appoint a Money Laundering Reporting Officer (MLRO)**

The 2003 regulations require firms to appoint an MLRO. The person appointed as the MLRO should have a suitable level of seniority and experience, comprehensive knowledge of the firm's business and ability to act without reference to or being influenced by anyone else in the firm. Employees must report suspicions of money laundering to the MLRO in the form of an internal report. The MLRO is then required to consider the internal report in relation to all relevant information that is available to the firm. If the internal report does justify the knowledge or suspicion then the matter must be reported by the MLRO to SOCA in the form of a suspicion report. If in doubt the MLRO should report a suspicion to SOCA. The MLRO must always document the reasons why an internal suspicion report is not submitted to SOCA.

The MLRO can be held to be personally liable if he/she receives reports of valid money laundering suspicions and fails to make a suspicion report to SOCA.

The MLRO is also responsible for ensuring that the firm's management establish and maintain internal controls and procedures and ensure that individuals are adequately trained. Some or all of these obligations may be delegated to the MLRO but management's responsibilities for such matters cannot be delegated.

Firms not regulated by the FSA are not required to have their MLRO produce an 'Internal Annual Report' covering compliance with the anti-money laundering obligations imposed upon the firm, however it is recommended that such an internal annual report is produced and retained by the firm (see Appendix A for guidance). This annual report should show the progress and developments over the year in respect of money laundering compliance and the adequacy of resources available to the MLRO to meet the obligations. It should also demonstrate that the firm is compliant and has been regularly monitored. It should also show that any requirements for remedial action identified by the MLRO in the report are receiving appropriate management attention on a timely basis.

Where a sole practitioner has no other employees, it is deemed that the sole practitioner fulfils the role of the MLRO.

5.3.2 **Establish Internal Procedures**

Firms will need to review their existing internal control procedures to ensure that they include measures appropriate to the prevention of money laundering. Firms may introduce the following suggestions as part of their internal procedures:

- there should be no intermediary parties between the person with the suspicion and the MLRO to ensure speed and confidentiality. However it may be appropriate to consult with an appropriate partner or other senior person who may have information that could confirm or negate the suspicion
- staff should be made aware that, when necessary, they have a direct route to the MLRO
- all suspicions reported to the MLRO must be documented
- the MLRO must acknowledge receipt of each report and at the same time provide a reminder of the obligation to do nothing that might prejudice enquiries, i.e to avoid committing the 'tipping-off' offence. All internal enquiries made in relation to the report, and the reason behind whether or not to submit the report to SOCA must be documented. This information may later be required at an investigation (see Appendix B & C)

- the firm may wish to consider advising the reporting person of the MLRO's decision, particularly if the reported suspicions are believed to be groundless. Likewise, at the end of the investigation, consideration should be given to advising all members of staff concerned of the outcome
- it is essential to retain records of suspicions which were raised internally with the MLRO but not disclosed to SOCA for five years from the date of transaction. (see 5.3.6 Record Keeping).

5.3.3 **Train Staff**

Firms are required to take appropriate steps to ensure that partners and employees are provided with training on the relevant matters of law and regulation, on the firm's in-house controls and procedures for preventing money laundering and on how to detect and deal with transactions and circumstances that may relate to money laundering.

Firms must take appropriate steps to ensure that staff are aware of the following:-

- policies and procedures put in place to prevent and detect money laundering, including those for identification, record keeping and internal reporting
- the legal requirements contained in the primary legislation and the regulations.

Further training should be provided as necessary to ensure that all staff are adequately trained to discharge the specific responsibilities assigned to them on a day-to-day basis, thereby protecting the firm against the "I was not trained" defence when an employee has failed to make a suspicion report when reasonable grounds for knowledge or suspicion existed.

Members should also be aware that ACCA UK is running several courses on money laundering and offering an online training course. Details in respect of the training courses (including online version) can be obtained by e-mailing ACCA UK at members@accaglobal.com. ACCA UK can also arrange in-house training. These courses are a useful way to communicate the new Regulations to all staff and help ensure that adequate training is given.

Comprehensive records must be retained of training given and of measures taken to ensure that training given has proved to be effective.

5.3.4 **Verify the identity of new clients and maintain evidence of identification**

Subject to the transitional arrangements, firms need to be able to establish that new clients are who they claim to be. *Chapter 4 – Know Your Customer and Identification Evidence* of the JMLSG Guidance Notes, is particularly comprehensive in this area and should prove useful for reference. This is available on the JMLSG website at a cost of £50 (www.jmlsg.org.uk).

A suggested client identification form can be found in Appendix D to this guidance. This will need to be tailored for a member's particular circumstances.

Identification procedures for individuals would typically include the firm seeing, and taking certified copies of, evidence establishing the client's name, address, and date of birth. (Note that the date of birth is not a statutory requirement but can be a useful check against impersonation and of assistance in certain circumstances to investigators). An official document with a photograph is particularly useful; the copy of the photograph of the client should always be certified as providing a good likeness.

In addition to the name/names used and date of birth where this is available, it is important that the current permanent address should be verified. Some of the best means of verifying addresses are:

- a face to face home visit to the applicant for business
- checking the Register of Electors
- making a credit reference agency search
- requesting sight of an original recent utility bill, bank or building society statement

- checking a local telephone directory
- sighting a current new-style or full, old-style driving licence.

The same document should not be used to verify both identity and address. When relying on third parties to provide certification on copy documents, this certification should always confirm that the original document has been seen and the certification should be by an appropriate and suitably independent person.

The Regulations 2003 require members to verify the identity of all new clients prior to commencing the proposed business relationship, however we recommend that this approach be used for all existing clients through a rolling programme of retrospective verification.

Non-UK residents
For those prospective clients who are not normally resident in the UK but who make face to face contact with the member, a passport or national identity card will normally be available. If the passport or identity document is unusual or if there is any doubt, the document can be checked with the Passport Handbook, which can be accessed through the Interpol website (www.interpol.int/public/publications/passport/default.asp).

Firms should be particularly vigilant in the case of non-UK resident prospective clients who are not seen face to face. However, care should be taken with any new client, not just non-UK resident clients.

Possible procedures to facilitate verification include the following:

- a branch office, associated firm or reliable professional adviser in the prospective client's home country may be used to confirm identity or as an agent to check personal verification details
- where the firm has no such relationship in the prospective client's country of residence, a copy of the passport authenticated by an attorney or consulate may be obtained
- verification details covering true name or names used, current permanent address and verification of signature may be checked with a reputable credit or financial institution in the prospective client's home country.

Identification of companies and other organisations
Due to potential difficulties in identifying beneficial ownership and the complexity of their organisations and structures, legal entities and trusts are among the most likely vehicles for money laundering, particularly when fronted by a legitimate trading company. Particular care should be taken to verify the existence of the prospective client, to identify the ultimate beneficial owner(s) and/or controller(s) of the entity and to ensure that any person purporting to act on its behalf is authorised to do so.

Companies, partnerships and sole traders (business)
The principal requirement is to identify those who have ultimate control or significant influence over the business and its assets. Particular attention should be paid to any shareholders or others who inject a significant proportion of the capital or provide financial support or who will benefit from it. Enquiries should be made to confirm that the entity exists for a legitimate trading or economic purpose and that it is not merely a 'shell company' where the controlling principals cannot be identified.

Before a business relationship is established, a company search and/ or some other commercial enquiries should be made to verify business history and ensure that the business has not been, or is not in the process of being dissolved, struck off or wound up.

If a firm becomes aware of changes to the client's structure or ownership, or if suspicions are aroused by a change in the nature of the business transacted, further checks should be made to ascertain the reason for the changes. However the firm would need to investigate with caution to ensure that the client is not 'tipped off'.

The verification evidence obtained for accepting clients must be recorded, maintained and kept up-to-date thereafter and retained for a minimum of five years after the conclusion of the client relationship.

Where the applicant for business is an unquoted company, an incorporated business or a partnership, the firm should identify the principal directors/partners and/or shareholders in line with the requirements for individual clients. In addition the following documents should normally be obtained:

- for established businesses, a copy of the latest report and accounts (audited where applicable)
- for new businesses, a copy of the business plan, cash flow projections and any other records enabling monitoring of the development of the new business
- a copy of the certificate of incorporation/ certificate of trade or equivalent.

The firm may also undertake a credit reference agency search or take a reference from a bank or from another professional adviser.

For private companies, partnerships or sole traders, the firm needs to establish the identities of the principal directors, all partners and proprietors on the one hand and evidence of the entity itself and the business activity on the other hand, i.e in two stages.

Trusts (including occupational pension schemes) and nominees
Where a firm is asked to act for trustees or nominees, the identities of all controlling parties must be verified. These include the trustees, the settlor and at least the principal beneficiaries. Particular care needs to be exercised when the accounts are set up in offshore locations with strict bank secrecy or confidentiality rules. Trusts created in jurisdictions without equivalent money laundering procedures in place will warrant additional enquiries.

Pension arrangements can take many forms. In the most common case, that of occupational pension schemes, verification can best be accomplished by obtaining proof of Inland Revenue approval for the scheme. Otherwise, the identity of the principal employer has to be verified, and also (by inspecting the scheme's trust documents) that of the trustees. There is no need to verify the identity of those who are to receive scheme benefits, unless either they are making their own contributions into the scheme (independently of payroll deduction means) or the firm is to give them advice individually.

Registered charities in England and Wales
The Charity Commission for England and Wales holds a central register of charities and allocates a registered number to each. Where the business is a registered charity, the Charity Commission should be asked to confirm the registered number of the charity and the name and address of the Commission's correspondent for the charity concerned. There is no comparable facility in respect of charities in either Scotland or Northern Ireland; a full verification must be undertaken instead.

Local Authorities and other public bodies
Where the client is a local authority or other public body, the firm should obtain a copy of the resolution authorising the undertaking of the relevant transaction or business activity. Evidence that the individual dealing with the firm has the relevant authority to act should also be sought and retained.

Identification process
The identification procedures will include confirming the identity of an 'end client' in a referral type situation. This process must be performed independently of the identification process performed by the person who introduces the end client unless that person is also subject in their/its own right to the Regulations.

Firms must also check the names of new clients against lists of known terrorists. Certain lists can be found at:

- http://www.bankofengland.co.uk/sanctions
- http://www.treas.gov/offices/enforcement/ofac/sdn/index.html
- http://www.fbi.gov/mostwant/terrorists/fugitives.htm

It will be uncommon for accountancy firms to be able to rely on exemptions to confirm the identity of new clients, as listed below. Firms are therefore advised to be cautious when seeking to rely on an exemption, and should consider seeking advice as to whether they are entitled to rely on a particular exemption, unless it is clear that an exemption applies.

The following are exemptions from the requirements to confirm the identity of new clients :

- the client is a person or entity bank subject to the Regulations in its own right and is not a money service operator
- in respect of one-off transactions, single or linked, not exceeding euro 15,000; and
- in respect of one-off transactions for a client introduced by either a UK regulated institution or is an institution based in a foreign jurisdiction with money laundering laws comparable to those laws operating in the EU. In these instances it is possible to accept written assurance from the institution confirming that the identity of every client they introduce will have been verified.

5.3.5 **Reporting suspicions and knowledge of money laundering to SOCA**

SOCA has designed a standard disclosure form to be filled in by the MLRO when filing reports. A copy of the disclosure form is available online from the SOCA web-site (www.soca.gov.uk/financialIntel/disclosure.html) along with a guide to completion.

Firms must state the reasonable grounds for the suspicion, and should be able to provide other required information that is relevant to the report.

Once a report of suspicion about a future transaction has been filed with SOCA, the latter has seven working days to respond. During this seven day period, no action should be taken by the firm and no further work carried out for the client concerned, i.e no action which could assist the launderer or otherwise constitute money laundering by the firm. Failure to observe this requirement places MLROs, individuals and firms and their management at risk of committing offences under section 327 to 329 and 336 of the Proceeds of Crime Act 2002. It is also an offence for the MLRO to consent to any such action after an internal report has been made by him and before the seven day period has expired.

It is an offence under the Proceeds of Crime Act 2002 for any individual to make a disclosure to another individual (including the client) which is likely to prejudice any investigation which might be conducted.

SOCA will contact the firm if it has any queries about the disclosure.

If no response is received from SOCA within the seven working days, SOCA is deemed to have provided consent to the transaction in the report, and the firm is entitled to proceed with that transaction. Where SOCA refuses to issue its consent, and provides notice of its refusal, there is a further period of 31 calendar days starting on the day that the firm receives the refusal notice from SOCA. During the 31 day period the MLRO cannot consent to, and the firm and individuals cannot proceed with, the transaction which has been reported. If no response is received from SOCA after the 31 day period, SOCA is deemed to have consented to the transaction.

When a suspicion report is submitted after a transaction has already been completed or the suspicion circumstances are already historic, there is no obligation to backtrack on or "unscramble" that which has already taken place. Suspicion reports should nevertheless be submitted for record purposes.

5.3.6 **Record keeping**

For any client or client transaction that raises suspicion, a firm should retain a record of:

- the name and address of its client
- the investment dealt in, including price and size
- the nature and value of the transaction
- the form of instruction or authority

- the origin of the funds paid by the client to the firm (including, in the case of cheques, sort code, account number, amount and name)
- the form and destination of any payment made by the firm to/for the client
- whether investments were held in safe custody by the firm or sent to the client or to his/her order and, if so, to what name and address
- the circumstances leading to any non-transaction based grounds for suspicion.

The Regulations do not state the location where relevant records should be kept but the overriding objective is for firms to be able to retrieve relevant information without undue delay. Records should be kept for at least five years from the completion of the transaction. (ACCA recommends that records are retained for longer periods see *Rulebook 2003* 3.3.7). One way to ensure consistency within a firm is to devise a checklist that is completed by the firm for all new clients (see Appendix D).

6 RECOGNITION OF SUSPICIOUS TRANSACTIONS

6.1 Warning signs, which can indicate that an established client's transactions might be suspicious include the following:

- the size of the transaction is inconsistent with the normal business activities of the client. This could involve large cash purchases or sales in a business which normally does not trade with cash
- the transaction is unusual in the context of the client's business or personal activities
- the pattern of transactions conducted by the client has changed, for instance a sudden change in trading activity and client base
- the transaction is international in nature and the client has no obvious reason for conducting business with the other country involved
- an unwillingness or inability to provide evidence to complete the verification process of a potential new client (whether the client is accepted or declined does not matter; such circumstances may of themselves give grounds for a reportable suspicion).

The above list of transactions is not exhaustive.

6.2 Sufficient training must be given to partners and staff to enable them to recognise suspicious transactions or situations. The type of transactions giving rise to suspicions will depend on a firm's client base and the range of services it offers. Firms should also consider monitoring the types of transactions and circumstances that have given rise to suspicions reports, with a view to updating internal instructions and guidelines when appropriate. One approach is to include this as part of the audit completion process as well as for accounts preparation assignments. A form may be completed as part of the audit process requesting the audit team to answer questions in relation to suspicions of money laundering, for example, note significant transactions in the year (see Appendix E). This will help highlight transactions which might give rise to increased risk or suspicion.

6.3 All firms have a clear obligation to ensure that:

- each practice partner and member of staff knows to which person he or she must report suspicions
- there is a clear reporting chain under which those suspicions will be passed without delay to the MLRO.

6.4 All partners/managers and staff must appreciate the significance of what is often referred to as either the "objective test" or the "negligence test". It is a criminal offence for anyone working in the regulated sector, i.e. anyone who falls within the scope of the Money Laundering Regulations, to fail to report where they have knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is laundering the proceeds of any criminal conduct.

6.5 What may constitute reasonable grounds for knowing or suspecting will be determined from facts or circumstances from which an honest and reasonable person engaged in a business in the regulated sector would have inferred knowledge or formed the suspicion that another was engaged in money laundering.

6.6 It is a defence for a person charged with failure to report an offence, whilst working in the regulated sector, that they had not received the specific training required to be provided by their employer under the Regulations and which would have enabled them to know or suspect that money laundering was taking place. Thus, the failure to recognise knowledge or suspicion and make a report on a timely basis is an offence unless the training defence can be relied upon. If the training defence succeeds, then by definition, the firm must be in breach of its training obligation

6.7 **Legal privilege**

Legal privilege can provide a defence to a charge of failing to report suspicions of money laundering but it is only available in certain specific circumstances to the legal profession when giving legal advice to a client. In most circumstances it is not available to accountants. Neither is it available to the legal profession when information is given with the intention of furthering a criminal purpose.

If a suspicion report under the Proceeds of Crime Act 2002 would result in the disclosure of privileged information, the firm may wish to take legal advice when deciding whether there are any grounds preventing them from making that disclosure.

7 CLIENT CONFIDENTIALITY

The reporting of suspicions takes precedence over client confidentiality considerations. The Proceeds of Crime Act 2002 provides protection for any breach of any duty to keep such information confidential. A firm should not include in its report of suspicions all that it knows about a client; the report should be limited to information that will be relevant.

8 TIPPING-OFF

Firms need to be careful to ensure that they do not tip-off a money launderer as this will constitute an offence under the Proceeds of Crime Act 2002. The simplest way to avoid this is to limit the number of people who have knowledge that a money laundering suspicion has arisen, that a suspicion report has been filed, and to ensure that these people are aware that they must not tip-off a money launderer.

9 RESIGNATION LETTERS

Auditors or any other accountants can resign from their position if they believe that their client or employer is engaged in money laundering or any other illegal act, particularly where a normal relationship of trust can no longer be maintained. Auditors who resign, or otherwise cease to hold office, are required by section 394 of the Companies Act 1985 to make a statement either giving their reasons that should be brought to the attention of shareholders or creditors, or stating that there are none. Firms are not entitled to remain silent about the circumstances connected with their resignation under section 394 even if those circumstances are knowledge or suspicion of money laundering. Where a disclosure of reasons may represent tipping off, firms should seek to agree the wording of the disclosure to shareholders with SOCA. Failing that, firms should seek legal advice, and may need to apply to the court for a declaration of what should be included in the section 394 statement.

10 QUALIFIED AUDIT REPORTS

There is a potential conflict between the duty owed by auditors to shareholders to issue a qualified audit report and the offence of tipping-off. Where a conflict does arise, auditors should seek to agree on an acceptable form of words with SOCA. Where agreement cannot be reached, firms should seek legal advice before issuing a qualified audit report. As a last resort it may be necessary to make an application to the court in respect of the content of the qualified audit report.

11 ENGAGEMENT LETTERS

11.1 Members may wish to include the paragraphs reproduced below in an engagement letter. Alternatively, members may decide not to refer expressly to the Act and Regulations and instead rely on their contents.

11.2 ACCA revised Engagement Letter CD ROM issued in June 2003, which includes the revised text (http://www.accaglobal.com/practicechannel/services/engagement_letter/):

> "In accordance with the Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 you agree to waive your right to confidentiality to the extent of any report made, document provided or information disclosed to the Serious Organised Crime Agency (SOCA).
>
> We are required to report directly to SOCA without prior reference to you or your representatives if during the course of undertaking any assignment the person undertaking the role of Money Laundering Reporting Officer becomes suspicious of money laundering."

11.3 Members may prefer to make no specific statement in the engagement letter noting that the duty of client confidentiality is over ridden by the duty to report anyway. A certain amount of discretion would be needed to ensure that clients are not alarmed by this disclosure. Clients need to be briefed on the implications.

12 LETTERS OF REPRESENTATION

Appropriate representation may be taken from all clients. Members should be aware that this does not limit responsibility and that appropriate money laundering procedures still need to be in place.

13 CHANGE IN APPOINTMENTS

Firms should seek advice from SOCA before disclosing any details of suspicions that might exist in response to a professional enquiry. The incoming accountant must always assume full responsibility for confirming a new client's identity and for deciding to accept a client's instruction. Members are reminded, however, that the absence of explicit comment in response to professional enquiry should not be taken as indicative that no suspicious circumstances exist.

14 TAX RELATED OFFENCES

14.1 The proceeds or monetary advantage arising from tax offences are treated no differently from the proceeds of theft, drug trafficking or other criminal conduct. This includes tax offences committed abroad. If the action constitutes an offence if it had taken place in the UK, then the offence can amount to money laundering even if there is no consequential effect on the UK tax system.

14.2 Tax evasion offences now fall within the definition of money laundering. This includes both wilful under-declaring of income and/or over claiming of expense. The legislation impacts on firms that provide services that could lead to, or are about to make, disclosures to the Inland Revenue or HM Customs and Excise, or who will be encouraging their clients to make such disclosures. In the first instance, disclosures of under-declaration of tax should be made to the Inland Revenue /HM Customs and Excise by the client or, if the client refuses, by the practitioner. If there are suspicions that disclosures to Inland Revenue or HM Customs and Excise relate to criminal conduct, then a money laundering report should be made in the first instance to SOCA. The Act requires that reports to SOCA be made as soon as possible.

15 CONSTRUCTIVE TRUSTS

A conflict can sometimes arise between the money laundering legislation and civil law. A firm may suspect that certain assets are the proceeds of crime and make a report about them. In such circumstances, it is possible that the victim of the original crime may be the true owner of the assets and have a civil claim to recover them. Such assets could be sums of money that have passed through the firm's client bank account. If the firm has notice that such assets are not rightfully owned by the client then there is a risk that the firm may be considered to be a

constructive trustee for the true owner. If the firm has any indication that this may be the case, then the report to SOCA should make clear the possible constructive trustee position. A "tick box" is provided on the SOCA form for this purpose.

16 PENALTIES

The maximum penalties that can be imposed for breaches of the law relating to money laundering are as follows:

- for failures by the firm and its management to fulfil any obligation imposed upon the firm, the partners/executive management may be imprisoned for a maximum of two years and/or subject to a fine; the firm may also be subject to a fine
- for providing any form of assistance to a money launderer or the money laundering process, up to 14 years imprisonment and/or a fine
- for failing to report a suspicion, up to five years imprisonment and/or a fine; and
- for committing the tipping-off offence, up to five years imprisonment and/or a fine.

17 TRANSITIONAL ARRANGEMENTS

17.1 Unless specified below, firms now need to implement and maintain identification procedures for clients. From September 2003 (to be finalised) firms are obliged to confirm the identity of new clients, but not existing clients.

17.2 Firms which have not been authorised for investment business nor registered under (Designated Professional Body) arrangements will need to implement and maintain identification procedures for all new clients as from September 2003.

17.3 Firms which are registered under the Designated Professional Body arrangements will need to confirm that their existing identification procedures are sufficiently robust for all new clients from the same date. Firms that are authorised under the Financial Services and Markets Act 2000 to conduct regulated activities, and are regulated in those activities by the Financial Services Authority (the FSA) are not required by the 2003 Regulations to undertake verification of identity procedures for a client with whom a business relationship was formed before 1 April 1994. That is the date the outgoing 1993 Regulations took effect. However, the FSA has indicated that it is moving towards requiring all of its member firms to verify all pre-1994 clients in accordance with contemporary standards. For money service operators, there is no obligation to verify clients established prior to the effective date of the Money Laundering Regulations 2003.

18 WHAT FIRMS ARE NOT REQUIRED TO DO

18.1 **Foreign money laundering legislation**
Firms are under no obligation under UK legislation to acquaint themselves with the money laundering legislation in other countries.

18.2 **Investigating suspicion**
Firms are not required to carry out investigative work beyond what they would normally do as part of their professional relationship. Indeed, to do so might well risk committing the offence of tipping-off.

18.3 **Cessation of work**
There is no need to cease working for a particular client where a firm has filed a suspicion report. In particular, no consent is required from SOCA to continue to carry on any function where a report has been made under section 330 of the Proceeds of Crime Act. The firm will not itself commit one of the main money laundering offences by continuing its work for the client. Regardless of whether the firm ceases or continues to work, care must be taken to ensure that the potential money launderer is not tipped-off. Note also that submitting a report to SOCA may not be delayed until after a future event has actually occurred; resorting to such delaying tactics may be construed as assisting a money launderer, thereby committing a criminal offence.

19 AREAS OF RISK FOR FIRMS

The following is a non-exhaustive list of ways in which a firm may be at risk of contributing to the money laundering process:-

- the manipulation of a client money account
- the giving of advice on corporate or trust structures, on and off-shore, or the managing of transactions in a way which may conceal their origins or intent
- the preparation of accounts and the submission of a wide variety of returns and reports provides a high degree of respectability if these can be used to conceal or add legitimacy to the organisation
- audit work where a high degree of assurance is given on the truth and fairness of annual financial statements
- advice on corporate structures or the management of transactions which may be of use to money launderers
- advice to clients for a number of legitimate purposes including for management control

20 RISK INDICATORS

20.1 Firms are targeted by launderers because of the air of legitimacy that they can bestow. Firms are encouraged not to assume that everything to do with a client's business is legitimate. Firms should be aware that what they see of a client may only be part of a larger operation which the money launderer is careful to keep hidden.

20.2 Money laundering does not have to involve multi-million pound transactions and international groups. By contrast, it can be close to home. The legislation provides no de minimis limits with the result that firms are required to report all suspicions of money laundering.

20.3 Indicators can include the following:

- source of funds is not known
- the client's business is cash based
- audit clients where there is a lack of independent audit evidence
- offshore companies
- lack of evidence of trade: has the firm actually seen evidence of the purported trade at the purported scale?
- overseas clients and overseas introductions
- investment policies cancelled in the "cooling off" period
- all a firm knows about a client is what the client has provided to the firm
- complex but unwarranted group structures
- intra-group trading
- dramatic increases/decreases in turnover
- high turnovers/volumes from small business locations
- transactions without an immediate or obvious purpose
- clients wanting to use the firm's client account as a bank
- clients wanting use of a client account denominated in a foreign currency
- clients wanting a business address to create a good impression
- clients with links to non-co-operative Countries and Territories
- persistent and unlikely 'errors' in tax returns in favour of the taxpayer.

20.4 One or more of these risk indicators occur in many legitimate clients where there is no cause to be suspicious. Firms need to consider their clients on an individual basis so as to come to any conclusions about suspicions they might have. See Appendix E for an example checklist.

20.5 Members should also be aware that ACCA UK is running several courses on money laundering which are a useful way to communicate the new regulations to all staff and ensures that adequate training is given. Training can also be organised on an in-house basis.

21 NON-COOPERATIVE COUNTRIES AND TERRITORIES

The Financial Action Task Force on Money Laundering ("FATF") and Joint Money Laundering Steering Group identifies and maintains a list of non-co-operative countries and territories that are viewed as having critical weaknesses in their anti-money laundering systems. An up to date list of the non-co-operative countries and territories can be found on its website (www.jmlsg.org.uk).

22 EXAMPLES OF WHERE MONEY LAUNDERING RISK INCREASES

22.1 **The use of front companies**
Serious and organised criminals frequently launder cash through legitimate and quasi-legitimate businesses. These businesses are often owned or part-owned by the criminals and/or by close associates, although legitimate businessmen may also be duped into providing the means for laundering criminal proceeds. Such businesses typically have a high cash turnover, since this makes it easier for criminally acquired cash to be fed in. Examples include taxi firms, restaurants, night-clubs and car sales or repair companies. The same businesses may support money–making criminality, for example by providing the means to transport drugs or to finance the venue where they are sold.

22.2 **Bureaux de change/money transmission agents**
Serious and organised criminals make frequent use of bureaux de change and money transmission agents (MTAs) to convert and transfer cash. This can involve the conversion of low denomination notes into larger denominations, often in a different currency, in order to facilitate the movement of funds both around the UK and overseas.

22.3 **Unregulated banking**
A number of methods exist by which money can be moved around the world without using the regulated financial sector, some of which are centuries old. In the case of the UK, the most significant is underground banking. It operates on trust and few, if any, records are kept. Having paid money to an underground banker, the customer trusts the banker, for a commission, to arrange with another underground banker that the intended recipient, usually based overseas, will receive the agreed sum, usually in the local currency. It is estimated that there are more than 1,000 underground bankers in the UK, where the majority of their customers are ordinary individuals and not criminals.

22.4 **Acquisition of assets and spending to support a lavish lifestyle**
The simplest way to launder criminal cash is to buy assets or to spend on a lavish lifestyle. Investment in property, in the UK and overseas, is common, and the property may in turn facilitate further criminal activity. Although simple, the use of cash in this way carries some risks, particularly if the pattern of spending exceeds any obvious sources of income. Such excesses have led to the phrase "life-style criminals", i.e. people whose life-style appears to be inconsistent with their legitimate sources of income.

22.5 **Confusing the audit trail**
Once cash has been placed in the financial system, serious and organised criminals use a variety of methods to confuse the audit trail, often by passing transactions through several stages (layering), each one making it more difficult to trace the true origin of the funds. For example, cash may be passed through legitimate or quasi-legitimate businesses in the UK, such as travel agents, takeaway food outlets and money exchanges and paid into a UK bank as business income. The UK bank is then used to transfer money to an overseas bank, often located where the regulated regime is weak. From there, the laundered proceeds may be transferred again to another country by any one of a number of means, including high value imported goods, or bank transfer. The increased availability of internet banks and the inherent secrecy of offshore accounts may also provide alternative means of confusing the audit trail.

22.6 **Financial products**

Another way of laundering money is to invest in financial products with a view to selling them quickly. The use of insurance policies, share portfolios, or high yield savings accounts to launder money often involves incurring penalties for the early withdrawal of savings or closing of policies, or the selling of shares at a loss. Serious and organised criminals may be prepared to bear such a cost if they perceive the cost of detection to be lower than other money laundering methods. This is an area where financial expertise could be used by a criminal and where the position of an accountant could be compromised.

22.7 **Criminal misuse of trusts**

A trust is a legal vehicle designed to hold any kind of asset. Assets are placed into the trust by the settlor and the legal interest in the assets then transfers to the trust. The trustee then administers the trust according to the wishes of the settlor. The beneficiary, designated by the settlor, holds the beneficial interest in those assets. There is evidence of the misuse of trusts by serious and organised criminals to conceal the proceeds of crime, principally as a means of layering rather than for the initial placement of cash. The secretive nature and flexibility of trusts explains their appeal to money launderers. Some are designed to hide any information relating to the settlor and beneficiary, to the point where the trust deed, if one exists and can be traced, would be misleading.

22.8 **Correspondent banking**

Correspondent accounts are held between banks in order to facilitate inter-bank transactions. They enable smaller banks or those operating in foreign jurisdictions to offer a wider range of international banking services. Although correspondent banking is a legitimate part of the international banking system, it may be open to abuse if less stringent customer identification and "know your customer" checks are required by the banks involved.

23 GOING FORWARD

23.1 Professionals continue to account for only a tiny percentage of suspicious financial transaction disclosures. This suggests that either the actual use of professionals is less frequent than might be imagined, or there is a lack of awareness or curiosity amongst professionals that they may be being used to launder money, or there is a degree of collusion. In the latter instance, the professional may not be an entirely willing accomplice, since serious and organised criminals are often willing to use intimidation as well as inducements to obtain the help they need. However, the risks in each case will have increased significantly, and one consequence may be that serious and organised criminals come to rely more heavily on professional help and advice.

23.2 It is vitally important that members do not under estimate the breadth of applicability of the money laundering regulations. The penalties for non-compliance have already been noted in this Technical Factsheet. In addition the Financial Services Authority has the power to take action against any firm or individual for non-compliance, irrespective of whether the firm or the individual is regulated by it. All of this is in addition to any disciplinary action that members may be subject to by ACCA. It is important, therefore, that members fully understand their obligations.

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APPENDIX A: INTERNAL ANNUAL REPORT

Recommended headings

PRIVATE AND CONFIDENTIAL
This report is for internal purposes only and should not be given to external parties

SUMMARY FOR THE YEAR

REPORTS MADE TO SOCA

SUSPICIONS NOT REPORTED

NUMBER OF CLIENTS REFUSED DUE TO UNSATISFACTORY INFORMATION

The above is for guidance only and should be tailored for individual firm's requirements

APPENDIX B: INTERNAL REPORT TO MLRO

Client: ..... No:-XXX

Date: .....

Partner responsible for client: .....

Second partner: .....

Transaction/circumstances giving rise to suspicion .....

.....

.....

Explanation and evidence to justify a report (please attach copies of evidence) .....

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Please note the information on this form should not be discussed with any individual within the firm without consent from the MLRO. Any further action to be taken should not be taken until consent is given by the MLRO first and no disclosure should be made to the client.

APPENDIX C: REPLY FROM MLRO

To: ..... No:-xxx

From: .....

Date: .....

Client: .....

This is to confirm receipt of your internal report no xxx dated xxxx. Please do not discuss this further with any individual or the client. I am seeking appropriate guidance and will contact you shortly.

Please refrain from carrying out any further work for the above client until further notice. I intend to bring this matter to the attention of the partners and will advise you accordingly.

You should be aware that under the Proceeds of Crime Act 2002 it is an offence for any individual to make a disclosure to another individual (including the client) which is likely to prejudice any investigation, which might be conducted.

Should you have any questions about the above, please come and see me at a mutually convenient time.

The above is for guidance only and should be tailored for the individual firm's requirements.

APPENDIX D: NEW CLIENT CHECKLIST - IDENTIFICATION PROCEDURE

Prepared by: .....Date: .....

This checklist should be tailored for individual firm and client requirements

	Reference	Comments
Individual (including shareholders)		
Confirm identity of individual (including shareholders) e.g copy of passport, driving licence		
Verify address e.g copy of utility bill		
Revised letter of engagement issued incorporating money laundering regulations 2003		
Discussion with client in respect of nature of business		
Credit reference check		
Source of reference		
Any outstanding tax matters/ payments		
Company,Partnership,sole trader (the business)		
Identify who has ultimate control		
Source of reference		
Company search carried out		
Copy of latest report and accounts		
A copy of the certificate of incorporation/Partnership agreement		
Credit reference check		
Revised letter of engagement issued incorporating money laundering regulations 2003		
Any outstanding tax matters or payments		
Trusts/Pension Schemes		
Identify all major parties including principal employer		
Source of reference		
Scheme's Trust documents have been reviewed		
Revised letter of engagement issued incorporating Money laundering regulations 2003		
Any outstanding tax matters or payments		
Charity		
Confirm charities registered number with Charity Commission		
Source of reference		
Trust deed/registration details		
Any outstanding tax matters or payments		
Revised letter of engagement issued with money laundering regulations 2003		

I am of the opinion that sufficient information has been obtained to confirm the client's identification.

Partner ..... Date .....

MLRO ..... Date .....

The above is for guidance only and should not be used as a complete list.

APPENDIX E: COMPLETION CHECKLIST - HIGHLIGHTS AREAS OF RISK

Prepared by: ..... Date: .....

Client: .....

Risk	**YES/NO**	**If YES, is there any suspicion of money laundering**
Does the client want to use the firm's client account as a bank account		
Is it a cash based business		
Is there a lack of independent audit evidence		
Is there a lack of evidence of trade		
Is it an overseas client		
Is there a complex group structure		
Has there been a change in business activity		
Is there intra-group trading		
Has there been dramatic increases in turnover		
Does the client have high turnovers/volume from small business locations?		
Were there any transactions in the year without an immediate or obvious purpose?		
Does the client require a client account denominated in a foreign currency?		
Does the client have a history of persistent and unlikely 'errors' in tax returns?		

The above should be used for guidance only and is not a complete list.

The partner responsible for the client should review this form once complete.